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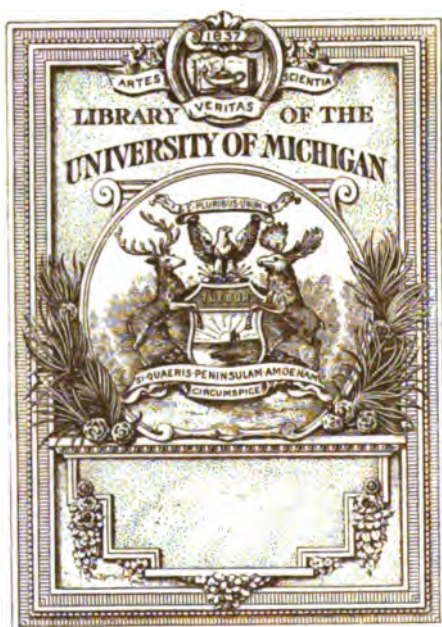
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American Telephone and Telegraph Company
Legal Department
15 Dey Street, New York, N. Y.

COMMISSION LEAFLET No. 42

**Recent Commission Orders, Rulings and Decisions
from the following States:**

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Florida	Montana
Idaho	Nebraska
Illinois	New York
Indiana	Oklahoma
Kansas	South Dakota
Kentucky	Virginia
Maine	Washington

Wisconsin
and from the
District of Columbia
and
Interstate Commerce Commission

JUNE 1, 1915

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PART I.

COMMISSION ORDERS, RULINGS AND DECISIONS DIRECTLY AFFECTING TELEPHONE AND TELEGRAPH COMPANIES.

INTERSTATE COMMERCE COMMISSION.

W. N. WHITE AND COMPANY *v.* WESTERN UNION TELEGRAPH
COMPANY.

No. 5130.

Decided April 1, 1915.

**Telegraph Rates Between New York and San Francisco and Cable
Rates Between New York and England Held Not Unreasonable
or Unjustly Discriminatory — Classification of Service
and Determination of Rates for Each Class.
Rests in First Instance with Utility.**

Complainant alleged that the defendant's standard rates for the transmission of messages by telegraph from New York City to San Francisco, and by cable from New York City to England, were unreasonable and unduly discriminatory.

The attack by the complainant in each case was based upon the fact that rates other than the standard rates were charged for certain classes of service.

Section 1 of the *Act to Regulate Commerce* provides that companies may classify their service and that different rates may be charged for the different classes.

Held: That the carrier should, in the first instance, determine the classifications, fix the rates for the various classes and formulate such rules pertaining thereto as are just and reasonable;

That the record does not show that the standard rate is unreasonable or unjustly discriminatory.

APPEARANCES:

W. N. White, one of the complainants, in person.

Rush Taggart and *Francis R. Stark*, for the defendant,

REPORT.

HALL, *Commissioner*:

In this proceeding defendant's standard rates for the transmission by telegraph of messages from New York, New York, to San Francisco, California, and by cable messages from New York to points in England are attacked as unreasonable and unjustly discriminatory. Complainants are copartners engaged as fruit and produce dealers in New York under the firm name of W. N. White and Company. Reparation is asked.

The regular charge for the transmission of a telegram containing not more than 10 words, exclusive of date, address, and signature, from New York to San Francisco is \$1.00. For each additional word the charge is 7 cents. Certain other rates, known as "day letter," "night letter," and "night telegram" rates, are available to the public. Restrictions and conditions attach to these messages which do not apply to those sent at the regular rate. The rates therefor are based upon deferred service, and are materially lower per word than the standard rate. Code wording is not permitted in day letters or night letters.

The attack upon the rate to San Francisco is based chiefly upon the fact that press dispatches are accorded special rates. That from New York to San Francisco is 3½ cents per word between 6 A. M. and 6 P. M. and 1¾ cents per word for the other 12 hours. A witness for defendant testified that press messages "must be always in plain language and for publication; bona fide reading matter of general interest to the public." Advertisements are not accorded the press rates.

Section 1 of the *Act to Regulate Commerce* contains the following provision:

All charges made * * * for the transmission of messages by telegraph, telephone, or cable, as aforesaid, or in connection therewith, shall be just and reasonable; and every unjust and unreasonable charge for such service, or any part thereof, is prohibited and declared to be unlawful: *Provided*, That messages by telegraph, telephone, or cable, subject to the provisions of this act, may be classified into day, night, re-

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peated, unpeated, letter, commercial, press, government, and such other classes as are just and reasonable, and different rates may be charged for the different classes of messages.

The right of carriers subject to the Act to initiate their charges is too well established to need citation of authority. Such charges are prima facie reasonable, except where otherwise provided by law. Congress has here provided that messages may be classified into "day, * * * press, * * * and such other classes as are just and reasonable," and that different rates may be charged for the different classes.

It is plain that both classification and charge are to be made in the first instance by the carrier, and it follows by necessary implication that the carrier is to define the classes and formulate such rules and regulations pertaining thereto as shall be just and reasonable. The initiative is with the carrier. The record indicates that standard and press messages differ in the circumstances attendant upon their transmission. It does not warrant a finding that the standard rate should be reduced to the press rate, or furnish a basis for determining what the rate relation should be.

Exhibits were introduced and some testimony given tending to show the earnings of defendant, its affiliations with other like companies, the history of its telegraph and cable rates, and many other things more or less relevant to this proceeding. A reduction in the rate from New York to San Francisco would naturally be reflected in the rates to intermediate points. To justify such reduction the evidence before us should be clear and convincing. *California Fruit Growers' Association v. Alabama Great Southern Railroad Company*, 32 I. C. C. 51. From a consideration of the record we find that the standard rate attacked has not been shown to be unreasonable or unjustly discriminatory.

The regular cable rate for transmission of messages from New York City to points in England is 25 cents per word. Such messages may be in any language that can

be expressed in Roman letters, or in code or cipher. For deferred or "half-rate" messages, subject to a delay not exceeding 24 hours in subordination to full-paid traffic, 9 cents per word is charged. Code or cipher is not permitted. They must be written in plain language of the country of origin or destination, or in French as the universal language. These deferred messages are received by the carrier at any time. Still lower public rates apply to "cable letters" and "week-end letters," because of restrictions and conditions attaching to such messages. For press messages between these points the rate is 7 cents per word from 6 A. M. to midnight and 5 cents per word during the remaining hours of the day.

Jurisdiction over these cable rates is clearly conferred upon us by the *Act to Regulate Commerce* and is admitted of record by counsel for defendant.

The evidence relied upon to establish the unreasonable and discriminatory character of the cable rate is of much the same character as that directed to the New York-San Francisco telegraph rate. One of the complainants testified that the service performed under the full rate is not materially different from that rendered in connection with the rate on deferred messages. The evidence, however, does not support a finding to this effect.

The record affords no basis for determining whether or not the present cable rate is reasonable. Nor is it shown what should be the relationship between the rates for the different classes of cable service. All cable rates above mentioned other than those for press service are open to the public. Complainants may avail themselves of the lower rates, and there is nothing of record to show how they are subjected to unjust discrimination when they elect to use the standard service.

It necessarily follows that no reparation can be awarded. The complaint will be dismissed.

ORDER.

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the

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parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the complaint in this proceeding be, and it is hereby, dismissed.

In re TELEPHONE AND TELEGRAPH INVESTIGATION.

Case No. 5462.

Dated April 5, 1915.

Investigation Discontinued.

Upon consideration of the record in the above-entitled case,

It is ordered, That this proceeding of investigation be, and it is hereby, discontinued.*

* For previous orders in this case, see Commission Leaflet No. 14, p. 126, and Commission Leaflet No. 21, p. 655.

CALIFORNIA.

Railroad Commission.

IN THE MATTER OF THE APPLICATION OF C. M. KIRBY
MISSION TO SELL, ASSIGN AND TRANSFER TO THE
TELEPHONE AND TELEGRAPH COMPANY ALL RIGHT
AND INTEREST IN AND TO THE TELEPHONE PROPE
SAID C. M. KIRBY, LOCATED AT DIXON, SOLANO
CALIFORNIA, AND OF THE PACIFIC TELEPHONE AN
GRAPH COMPANY TO PURCHASE ALL SAID TE
PROPERTY OF SAID C. M. KIRBY, LOCATED AT
SOLANO COUNTY, CALIFORNIA.

Application No. 1577 — Decision No. 2245.

Decided March 19, 1915.

**Purchase of Competing Telephone System and Consolidation
Authorized.**

APPEARANCES:

*James T. Shaw and H. D. Pillsbury, for The Paci
phone and Telegraph Company.*

C. M. Kirby, in propria persona.

REPORT.

DEVLIN, Commissioner:

The Dixon Mutual Telephone Company, prior
month of April, 1914, owned a system of telephone
the town of Dixon and nearby territory, Solano
connecting with a central switchboard located in Di
operated by C. M. Kirby. This system was cons
and placed in operation a number of years ago l
people whose original purpose was to secure te
service among themselves. Nominal rates were c
which in time proved to be insufficient to cover the
operation, and, as a result, the service was allowe
come inefficient and unsatisfactory. The Pacific Te

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and Telegraph Company is also operating an exchange in Dixon with lines serving the same territory which the local company's lines served, and, following certain negotiations between representatives of the two companies looking to a consolidation of the two systems, the local company's patrons were disconnected on April 1, 1914, from its switchboard and connected with the Pacific company's exchange.

The application now before the Commission is for the purpose of securing the necessary Commission authorization to close the transaction by a sale and transfer of the property involved to the Pacific company for the sum of \$500. The property which it is desired to transfer is briefly described in Exhibit "A," which is made a part of the application.

These two systems, which were competitive in nature, were placed in operation before the Public Utilities Act conferred jurisdiction in such cases upon the Railroad Commission. The consolidation, however, was effected after the Public Utilities Act, which provides that the Commission's permission to such transactions shall be obtained, became effective, and although there has been considerable delay in presenting the matter to the Commission for formal action, it appears that the delay has arisen as a result of some doubt on the part of representatives of the two companies as to whether the local company was operating as a public utility and, therefore, whether the case would properly come within the provisions of the Act, rather than through any desire to evade its provisions.

From Mr. Kirby's testimony, it appears that, except in two possible individual instances in which increases in rates over the rates formerly in effect by the Dixon Mutual Telephone Company resulted, the change has not resulted in higher rates being charged the patrons of that company, while in some instances the aggregate rates formerly charged have been reduced by the elimination of duplicate telephones which were formerly necessary with the two systems in operation. It has also brought about more ade-

quate and more satisfactory service to the patrons of both companies and has resulted in relieving the local company of its responsibilities as a public utility, a result which it desired since it is without the means of adequately meeting those responsibilities.

With reference to the amount involved in the transfer of this property, while the Commission withholds its approval of this amount as a valuation of the property involved, it appears to be sufficient for the purposes of this proceeding. It appears further that the public interest will be subserved by the completion of this transfer and I shall recommend that the application be granted.

ORDER.

Application having been made by C. M. Kirby for permission to sell, assign and transfer to The Pacific Telephone and Telegraph Company, and by The Pacific Telephone and Telegraph Company to purchase, all right, title and interest in and to the telephone property of said C. M. Kirby, located at Dixon, Solano County, California, as set forth in the preceding opinion, for the sum of \$500 and a hearing having been held, and no reasonable objection appearing, and it appearing to this Commission that the public necessity and convenience will be subserved thereby,

It is hereby ordered, That the application herein be, and it is hereby, granted.

Provided, That the amount of \$500 specified in the application to be paid for the transfer of this property is not to be taken by this Commission or other authority as a basis for rate-making or other purposes.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this nineteenth day of March, 1915.

DISTRICT OF COLUMBIA.

Public Utilities Commission.

**IN THE MATTER OF THE RATE OF INTEREST TO BE PAID ON
DEPOSITS REQUIRED BY UTILITIES.**

Order No. 148.

Decided April 23, 1915.

**Five Per Cent. Fixed as Rate of Interest on Deposits Required by
Utilities.**

ORDER.

The Public Utilities Commission on its own initiative investigated the practices adopted by the several utilities in the District of Columbia for protection against loss due to non-payment of bills by their customers. It was found that all utilities requiring deposits did not pay the same rate of interest thereon, in one case 5 per cent. being paid on such deposits, in another case, 4 per cent., and in still another, no interest was being paid.

The Commission is of the opinion that, since these deposits are available by the utilities for use in the transaction of their affairs, a reasonable rate of return should be paid thereon by the utilities, and the customers of whom the deposits are required are entitled to a reasonable rate of return thereon; and the Commission is further of the opinion that 5 per cent. is a reasonable rate of interest in such cases.

It is, therefore, ordered, (1) That, whenever a deposit is required of a customer by a utility, interest at the rate of 5 per cent. be paid thereon during the time that the deposit is retained by the utility.

(2) That this order take effect May 1, 1915, and continue in force until changed or abrogated by further order of the Commission.

Dated April 23, 1915.

FLORIDA.

Railroad Commissioners.

IN THE MATTER OF THE PETITION OF THE SANFORD TELEPHONE COMPANY.

Order No. 479.

Decided April 7, 1915.

Establishment of Rate Based Upon Estimated Cost of Proposed Improvements Refused.

ORDER.

This matter came on for consideration upon the petition of the Sanford Telephone Company, in and by which petition said Sanford Telephone Company prayed for an order approving rates to be charged "between Southern Bell Telephone and Telegraph Company and the city of Sanford," and the said Sanford Telephone Company being represented by *George A. DeCottes* and the Southern Bell Telephone and Telegraph Company being represented by *H. E. W. Palmer*; and it appearing to the Commissioners that the petitioner has no standing to ask that rates be fixed for another company;

Whereupon *H. E. W. Palmer*, attorney for Southern Bell Telephone and Telegraph Company, announced his desire that his company be made a party to the application. But it was determined by the Commissioners that even considering the Southern Bell Telephone and Telegraph Company as one of the petitioners, they could not then consider the petition, as the allegations thereof showed that a rate was sought to be established based upon an amount of money estimated to be necessary to the improvement in the plant at Sanford, but which has not been invested therein, and

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that the application is based entirely upon a future contingency;

It is, therefore, considered, ordered and adjudged, That the prayer of the said petition be, and the same is hereby, denied.

Done and ordered by the Railroad Commissioners of the State of Florida in session at their office in the city of Tallahassee this seventh day of April, A. D., 1915.

IDAHO.

Public Utilities Commission.

IN THE MATTER OF THE APPLICATION OF THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY FOR PERMISSION TO PUBLISH, FILE AND PLACE IN EFFECT A NEW SCHEDULE OF INTER-EXCHANGE TELEPHONE RATES FOR INTRASTATE TRAFFIC IN THE STATE OF IDAHO.

Case No. F-67 — Order No. 218.

Decided April 10, 1915.

Establishment of One-minute Initial Period for Inter-exchange Messages Denied.

OPINION AND ORDER.

On November 23, 1914, The Pacific Telephone and Telegraph Company applied to this Commission for permission to file and make effective on less than statutory notice a new schedule of inter-exchange rates for its traffic in the State of Idaho, and with its application filed a copy of its proposed schedule. The application was denied by the Commission's Order No. 181, on the ground that the proposed schedule, if put in effect, would result in an increase in many of the rates then in effect, which is not permitted under Section 59 (a) of the Public Utilities Act, and upon a showing before this Commission that such increase is justified.

Afterwards on the fourteenth day of December, 1914, said The Pacific Telephone and Telegraph Company renewed its application to file and make effective the proposed schedule of rates and filed its petition setting forth the following facts:

"It is a corporation organized under the laws of the State of California and is engaged in a general telephone and telegraph business throughout the states of California, Oregon, Washington and a portion of the State of Idaho, and subject to the provisions of the Public Utilities Act of the State of Idaho;

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That it has been engaged in a study to determine a schedule of inter-exchange rates to comply with the provisions of Section 23(b) of the Public Utilities Act of the State of Idaho;

and praying;

That the Public Utilities Commission of the State of Idaho, after such hearing concerning the propriety of the schedule presented as may be necessary, to establish such schedule and authorize it to publish, file and place same in effect, or to make such other and further order in the premises as may be just and reasonable."

Hearing was had on such petition on the fifth day of January, 1915, at Lewiston, Idaho, before J. A. Blomquist, Commissioner, and at said hearing the following appearances were entered:

J. T. Shaw, attorney, San Francisco, California, representing the applicant company.

R. S. Loring, representing the city of Lewiston, Idaho.

F. H. Rehbery, representing the village of Kamiah, Idaho.

John Meyer, representing the village of Cottonwood, Idaho.

J. M. Gilmore, attorney, representing the city of Grangeville, Idaho, and

L. L. Haynes, attorney, appeared and took part in the proceedings.

Mr. Blomquist's term as a member of the Commission expired on the fourteenth day of January, 1915, and this opinion and order are based on the conclusions of the Commission after a careful reading of the testimony of the witnesses called at said hearing, and an examination of the exhibits and schedules offered in evidence.

An examination of the proposed schedule shows that the applicant company is seeking to establish a uniform initial period of one minute for all messages transmitted by it and that the effect of the proposed schedule would be to increase many of the rates now in effect. Attorney for the applicant company claims that the new schedule was

offered for the purpose of eliminating some apparent discriminations in the existing schedule and complying with the requirements of Section 23 (b) of our Public Utilities Act. This is a commendable purpose. The Commission is aware that the existing schedule contains some discriminatory rates and some violations of long and short haul requirements but it is not satisfied that the proposed schedule is fair and just to the patrons of the applicant company, especially those in the territory developed under the three-minute initial period plan. From a study of the exhibits introduced at the hearing, especially the table showing the number of conversations and time actually consumed in such conversations between the various points in the territory, we are convinced that the one-minute initial period plan will not be found practicable and will be found unsatisfactory to a large number of the patrons of the utility unless the rate for the initial period of one minute is materially reduced or the overtime rate is so adjusted as to eliminate the many increases in charges for a three-minute conversation. We do not believe that the business centers of the territory will be able to secure any benefits from the reductions in the initial rates based on the one-minute initial period. Statement three in applicant's Exhibit "A," shows actual results based on the traffic for a period of thirty days as follows:

Lewiston, Idaho, shows 1,417 conversations under the one-minute initial period, and the average length of time consumed in these conversations was 2.03 minutes, and 709 conversations under the three-minute initial period shows average time consumed as 2.23 minutes or a total of 2,126 conversations, averaging 2.17.

Moscow, Idaho, the next largest user of the utility shows 262 conversations in the same 30 days period under the one-minute initial period with an average of 2.08 minutes per conversation.

The greater portion of the telephone business in Idaho is based on the three-minute initial period plan and we do not believe that the territory affected by this application

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is so densely populated or that the demands upon the lines of applicant company are so great that the Commission would be justified in authorizing the publication of the proposed schedule which seeks to put the entire territory under the one-minute initial period plan.

The applicant company has furnished the Commission with a condensed financial statement of its operations in Idaho but the statement is of no value to the Commission as an aid to determine the reasonableness of either the present or proposed rates. The statement does not indicate to the Commission how the maintenance and operating expenses have been apportioned as between Idaho and the other states in which the applicant is doing business. The deduction for depreciation seems to us excessive when compared with other items in the statement. We believe the discriminations and violations of the long and short haul requirements may be eliminated by the company without resorting to the radical change of initial period and rates as found in the proposed schedule.

The Commission having considered all the testimony and having examined the exhibits, and being fully advised in the premises, does hereby

Order, That the said application and petition be and the same is hereby denied.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Public Utilities Commission of the State of Idaho, this tenth day of April, 1915.

ILLINOIS.

State Public Utilities Commission.

In re INVESTIGATION OF STANDARDS FOR TELEPHONE SERVICE
IN THE STATE OF ILLINOIS.

Conference Ruling No. 18.

Dated March 31, 1915.

Standards for Telephone Service Established.

CONFERENCE RULING.

The Illinois Public Utilities Commission Law requires that all public utilities furnish adequate and efficient service and invests in the State Public Utilities Commission the authority to formulate, from time to time, such standards and definitions of adequate service as it may see fit.

Believing that the establishment of standards for telephone service would be of material aid in bettering such service throughout the State, an investigation of the matter was instituted by the Commission.

Notice of public hearing before the State Public Utilities Commission of Illinois, at Springfield, on January 29, 1915, to consider the question of standards for telephone service, was served on all telephone utilities of the State. At that meeting, at which a large number of telephone utilities was represented, tentative rules were submitted and discussed. The rules and explanations promulgated in this order are the result of careful consideration of the suggestions offered at the hearing and subsequent investigation with reference thereto.

The rules deal with the elimination of cross-talk and noise, the number of subscribers to be connected on local exchange lines and rural lines, the maintenance of lines for through traffic, the proper maintenance of equipment, the

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employment of sufficient operating force, provisions for emergencies, the proper handling of calls, the preparation of directories, and the elimination of interruptions and irregularities to the service.

No specific rules are prescribed with regard to toll service, but general provisions are made for the testing of circuits, reporting of trouble on circuits, accurate devices for the timing of toll messages, avoidance of unnecessary delay in the handling of such messages, methods to be followed by the operators, and the recording of the condition of toll lines entering each exchange.

RULE 1. The lines and equipment of each telephone utility shall be so constructed and maintained as to eliminate, as far as practicable, all cross-talk and noise resulting from leakage and induction, and to insure good transmission over local exchange lines and long lines ordinarily used in the transmission of messages or conversations.

Where ground return lines are in service, or where the lines are in close proximity to power lines, objectionable noise and poor transmission are frequently encountered. All new lines should be so constructed as to eliminate these conditions, and it is strongly recommended that the best types of construction and maintenance be adopted.

RULE 2. On new construction not more than four subscribers shall be connected on any local exchange line and not more than ten subscribers shall be connected on any rural line having a length of five miles or less. On rural lines of greater length this number may be exceeded, but in no case should the number of subscribers on any one line be greater than that consistent with adequate service.

Under ordinary circumstances not more than fifteen subscribers should be connected on any rural line, but in special cases a larger number may be justified. Where the use of the service and the revenue derived therefrom warrants such action, the number of subscribers on any one line should be reduced materially below this maximum. Service

of a higher class should be rendered to subscribe demand it and are willing to pay the addition thereof.

RULE 3. Each telephone utility furnishing service or jointly with other telephone utilities, between cities or villages, in which exchanges are operated maintain, for through traffic between such cities or at least one trunk-line, either direct or switched, with no subscribers' instruments are connected. With through traffic warrants it, additional lines shall be provided sufficient to maintain adequate service.

The above rule should be adhered to, whether the traffic is handled on a toll basis or is included in charges for service. Toll stations may be installed through lines, provided the operation of such stations not interfere with the handling of through traffic.

RULE 4. Each telephone utility shall make such tests and inspections of its lines and equipment as may be necessary to insure the maintenance and operation of such lines and equipment at a high standard of efficiency.

The nature of these tests and inspections depends on the kind of system, the protective devices installed, the interference from storms and other external sources experienced. The Commission does not desire to dictate exactly the nature and extent of these tests, but inspectors will supervise the practice of the companies complying with this rule and make suggestions regarding necessary changes in test practice. When permanent repairs cannot be made promptly, temporary repairs may be made. Such temporary repairs, however, shall be made permanent just as quickly as possible.

RULE 5. Each exchange shall have sufficient office equipment to meet all requirements and shall have sufficient operating force to handle the traffic adequately and efficiently. Traffic studies shall be made and recorded at regular intervals by each utility.

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to demonstrate to the Commission that sufficient equipment is in service and the necessary operating force employed to handle the traffic with reasonable facility.

Where the use of the service does not warrant having an operator on duty full twenty-four hours, provision should be made, if practicable, for emergency calls being handled on a reasonable basis, even though the exchange is not operating for the ordinary convenience of the occasional users.

The traffic studies should include such items as the number of calls made during the busy hour and during other periods of the day and night, together with the way in which this traffic is divided between operators, and the time of day when the heaviest loads occur.

RULE 6. *Every telephone utility shall make reasonable efforts to provide for meeting of emergencies such as failure of lighting or power service, sudden increases in traffic, or illness of operators; and should issue instructions to its employees covering the methods to be followed in promptly clearing trouble resulting from storms, fires and other emergencies which seriously affect the service.*

No exchange furnishing continuous service shall be left in the sole charge of one operator, unless some other person capable of operating the exchange is available in case of emergency. There should be some provision for changing over to another system of ringing in case of failure of power service, as well as a reserve source for lighting, which is instantly available. A reasonable stock of repair parts and line supplies should always be on hand.

RULE 7. *Any telephone exchange serving more than five hundred city subscribers shall be considered as giving reasonably prompt service if ninety-four per cent. of all the calls are answered in ten seconds or less. All other telephone exchanges shall answer at least ninety per cent. of the calls within ten seconds. Where the traffic is insufficient to require the entire attention of an operator and the exchange is operated in connection with other work, slower service may be adequate.*

If an exchange is being operated in connection with other work on the part of the operators, the Commission may require the exchange to be operated independently whenever the traffic and revenue warrant such an operation.

RULE 8. *Each telephone utility shall adopt rules and instructions governing the methods and policy to be used by operators in the handling of all*

Traffic bulletins used by the larger telephone companies include in the instructions the phraseology to be used by the operators, and it appears that it is essential that the operating instructions be followed as closely as possible. The efforts of telephone companies along this line will insure the desired results and the Commission, through its inspectors, will supervise the practice of the companies in complying with the above rule and make suggestions for changes in their practice.

Subscribers should be required to call by number whenever practicable. In order to avoid giving the wrong number, it is advisable for operators to repeat the number to the subscriber before making the connection.

Telephone courtesy is extremely important to the growth and development of the telephone industry, the encouragement of the use of the telephone for important work, the eliminating of dissatisfaction and complaints on the part of the subscribers. Not only is it necessary that employees of the telephone utilities be courteous over the telephone but they should encourage courtesy on the part of the subscribers. Employees should not be allowed to listen on telephones in use except where this is necessary in the carrying out of the work. Operators should be very careful never to direct traffic from one subscriber to his competitors, or to discriminate in the quality of service and attention given to various subscribers.

RULE 9. *Telephone directories of exchanges having more than one thousand subscribers shall be printed and distributed to subscribers semi-annually. Telephone directories of all other exchanges shall be*

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printed and distributed to subscribers at least once each year. All directories should be dated and should contain such instructions as may be necessary to inform subscribers of the action they should take in order to obtain adequate and efficient service.

The revising of directories should be governed by the number of changes necessary to make the directory correct and up to date, and in some instances it may be desirable to make revisions more frequently than specified in the rule.

RULE 10. *Rules and regulations governing local and toll service shall be printed in all directories. Each public pay station shall be provided with a directory. There shall also be posted in each public pay station instructions for the use of the equipment.*

Utilities may find it convenient and desirable to include in their directories the Commission's rules, cuts showing the proper way of speaking into the transmitter, and suggestions regarding the enunciation to be followed to eliminate misunderstanding the numbers given, etc.

RULE 11. *Every telephone exchange shall maintain an accurate record of all complaints, interruptions or irregularities of the service, such record to include the date and time the trouble was reported, the nature of each complaint or irregularity, the duration of same, the action taken to clear the trouble, and the date and time such trouble is cleared. All reasonable efforts should be made to eliminate interruptions and irregularities and to properly care for all complaints that arise.*

Such a record of complaints will indicate to the company officials and to the Commission's inspectors whether or not any particular subscriber encounters the same difficulty frequently, whether a large number of complaints arise from the same irregularity in service, and whether some phases of the maintenance or operation are unsatisfactory. The ordinary slips filled out when the complaint is made, together with the notes of the trouble man or wire chief, will be satisfactory.

RULE 12. *For the purpose of assisting the Commission in enforcing these standards, each telephone utility shall file with the Commission the name and address of each operator or employee with whom service complaints and irregularities shall be taken up to insure prompt attention to such complaints and reports. One copy of each issue of the directory shall be filed with the Commission at the time of the distribution of such directory.*

TOLL SERVICE.

Toll service should be properly routed to give efficient service as well as justice to the telephone customer where more than one utility is involved. In general, circuits should be tested out early each morning so that trouble may be promptly eliminated. This is especially important after storms. On joint lines or where one utility uses the lines of another utility, trouble or delay should be promptly reported to the utility responsible for the maintenance of the line. Accurate and converging devices should be installed in order that toll charges may be just, and that the service may not be unnecessarily delayed in order that the calls may be properly timed. The tone of voice used by operators is very important, especially on toll service. Toll operators should cultivate only a distinct articulation, but low tones and harsh voice. This would aid materially in giving satisfactory service at highest efficiency. A record of the long distance circuits entering each exchange should be maintained for the convenience of the utilities in maintaining their lines, and for the Commission's operators in investigating service conditions over toll lines.

These rules define a quality of service which is economical and at the same time reasonably adequate to the public. The Commission realizes that it is impossible to establish general rules which will effectively cover every contingency, and if rigid adherence to the rules here prescribed should, in any particular case, result in an undue burden to the company, or higher rates to the subscribers

a commensurate betterment in service, application should be made to the Commission for a modification, giving the reasons therefor. The Commission, through its inspectors, will require full compliance with the rules, except in cases where special modifications are secured upon individual application.

It is, therefore, ordered, That all telephone utilities operating in the State of Illinois hereafter comply with the requirements of the rules and regulations enumerated above. Sixty days is deemed a sufficient time within which to comply with this order.

By order of the Commission, this thirty-first day of March, 1915, dated at Springfield, Illinois.

PITCHER TELEPHONE COMPANY v. STEELE TELEPHONE
COMPANY.

Case No. 3267.

Decided March 31, 1915.

**Unauthorized Construction of Exchange in Occupied Territory Ordered
Discontinued.**

The complaint alleged that the respondent was preparing to build a telephone line paralleling that of the complainant from Elizabeth to Scales Mound, and was also preparing to install a switchboard at Scales Mound, all in violation of the anti-duplication section of the Public Utilities Act.

The respondent had purchased from the LaFayette County Telephone Company the line extending from Shullsburg to Scales Mound where it was connected with a switchboard which the complainant had for several years been operating there. After purchase by the respondent, the line had been disconnected, and the respondent had canvassed the village to obtain subscribers for a new exchange.

The respondent claimed the right to install, operate and maintain a local telephone exchange in the village and also to establish a continuous line of communication between its Scales Mound exchange and its Elizabeth exchange on two grounds: (1) As assignee of the franchise of the LaFayette County Telephone Company. (2) As a necessary incident to perfecting its system and extending the same so as to be able to give better service to its patrons and the public.

Held: That as the assignment of the franchise of the LaFayette County Telephone Company to the respondent was made without the consent and approval of the Commission, it did not carry with it any right to install, operate and maintain a telephone exchange in the village of Scales Mound.

That the contention of the respondent that the installation of the switchboard was necessary in perfecting its system was not well founded, the question of public convenience and necessity not being at issue as the respondent had made no application to the Commission for a certificate of public convenience and necessity.

That the installation of the switchboard was not in substitution of an existing plant or an extension thereof or an addition thereto, but was a construction of a new plant within the meaning of the Public Utilities Act.

That the action of the respondent in undertaking to install said switchboard without first securing from the Commission a certificate of public convenience and necessity was in violation of law.

Ordered, That the respondent suspend all work incident to the installation and operation of a switchboard and the establishment of a local telephone exchange in the village of Scales Mound until it has obtained from the Commission a certificate of public convenience and necessity.

OPINION AND ORDER.

The petition filed in this case sets forth that the complainant, Pitcher Telephone Company, is a corporation organized and doing business under the laws of the State of Illinois, with its principal place of business at Warren, Illinois; that it is a public utility, and that as such public utility it is subject to the provisions of an Act entitled, "*An Act to Provide for the Regulation of Public Utilities.*"

That The Steele Telephone Company, of Elizabeth, Illinois, a public utility engaged in the management and operation of a telephone system in Jo Daviess County, Illinois, and as such public utility subject to the "*Act to Provide for the Regulation of Public Utilities,*" is violating Section 55, Article IV, of said act, in that it is (1) preparing to build a parallel telephone line extending from Elizabeth to Scales Mound; (2) that it has bought a switchboard and is arranging to install such switchboard in the village of Scales Mound; (3) that it has contracted to switch for all who may request the service, for the sum of \$6.00 per year;

and (4) that it has represented that it has obtained 80 per cent. of the subscribers of the Pitcher Telephone Company in and around the village of Scales Mound, while many of the names that appear on a certain petition are not those of subscribers of the Pitcher Telephone Company.

Answering the complaint of the Pitcher Telephone Company, the respondent, The Steele Telephone Company, avers that C. E. Steele, of Hanover, Illinois, is the owner of the telephone system in Jo Daviess County known as The Steele Telephone Company "for more than ten years last past" and that he is one of the commissioners licensed by the Secretary of State of the State of Illinois to incorporate the said company under the laws of the State. That it neither admits nor denies that it is subject to the provisions of "*An Act to Provide for the Regulation of Public Utilities*," now in force in the State of Illinois; that it denies that it is acting in violation of Section 55, Article 8; of said Act, for the reason that said Act, "in terms, applies to new companies not heretofore doing business in this State when the Act provides that permission to do such business as comes within the Act shall first be had and obtained from said Commission."

That the said C. E. Steele has for more than ten years last past been operating the telephone system in said Jo Daviess County, Illinois, known as The Steele Telephone Company, and that he is now in the act of incorporating said company, and that he is not starting nor organizing a new company, but is simply perfecting the present system and extending the same so as to be able to give better service to his patrons and the public.

The respondent denies that it is preparing to build a parallel line running from Elizabeth to Scales Mound, as charged by the complainant, and states the facts to be that the said Pitcher Telephone Company has no direct line from Elizabeth to Scales Mound; that the respondent has for more than five years had a telephone connection between Elizabeth and Scales Mound; that it has owned, by purchase from the Bell Telephone company, a line from

Elizabeth to Sharpsville and that it owns a line from Sharpsville to Scales Mound; hence has no occasion to build or construct a new line as charged.

The respondent admits that it is arranging to install a new switchboard in the village of Scales Mound and that this is in the natural course of improving its telephone service; that it purchased from the LaFayette Telephone Company, of Wisconsin, all of the lines, equipment and franchise of said LaFayette Telephone Company in Daviess County; that the respondent is simply perfecting its system and lines and for that reason finds it necessary to install a new switchboard in the village of Scales Mound where it has all of the rights of said Wisconsin company.

Hearing in this case was held at Chicago, January 1915. *M. J. Dillon*, attorney, appeared for the complainant and *D. F. Matchett*, attorney, appeared for the respondent.

From the testimony presented at the hearing it appears that the complainant, Pitcher Telephone Company, operates a general telephone system in Jo Daviess County, Illinois, with lines extending into southwestern Wisconsin consisting of local exchanges and connecting toll lines. Exchanges are operated at Warren, Apple River, Garden of Eden, East Dubuque, Stockton, Elizabeth, Woodbine, Hanover, Council Hill and Scales Mound.

The respondent, The Steele Telephone Company, owned by G. Steele, owner, operates a telephone system consisting of local exchanges and rural lines in the south-central part of Jo Daviess County, exchanges being operated at Elizabeth and Hanover. Through a connection with the lines of Central Union (Bell) Telephone Company, the subscribers of The Steele Telephone Company have connection with the entire system of the "Bell" company.

It further appeared that the complainant, Pitcher Telephone Company, has operated an exchange in the village of Scales Mound for about sixteen years and that it serves approximately, 113 subscribers in and around the village. That prior to December, 1914, a line owned by the LaFayette County Telephone Company, extending from

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Shullsburg, Wisconsin, to Scales Mound, Illinois, and having connected with it some 8 or 10 rural subscribers, was connected with the switchboard of the Pitcher Telephone Company. That in December, 1914, this line was purchased from the LaFayette County Telephone Company by The Steele Telephone Company and shortly thereafter the line was disconnected from the switchboard of the Pitcher Telephone Company.

It further appeared that after acquiring said line extending from Shullsburg, Wisconsin, to Scales Mound, Illinois, The Steele Telephone Company canvassed the village of Scales Mound and the surrounding territory with a view of securing a sufficient number of subscribers to warrant said company in installing an exchange in the village of Scales Mound, and did secure the signatures of some eighty persons in and around the village who indicated their desire for such service.

It further appeared that the Pitcher Telephone Company undertook to counteract the efforts of The Steele Telephone Company and to that end made certain improvements in its plant and equipment, which resulted in some improvement to the service. The Steele Telephone Company contended by reason of having acquired the property and franchise of the LaFayette County Telephone Company in the village of Scales Mound it has the right to install, operate and maintain a local telephone exchange in the village and also to extend its lines in such manner as to establish a continuous line of communication between the proposed exchange in the village of Scales Mound and the exchange that it operates in the village of Elizabeth, and considerable testimony was offered in support of this contention.

Considerable testimony also was offered in support of the statement in the answer of the respondent that it is "simply perfecting its system and lines and for that reason finds it necessary to install a switchboard in the village of Scales Mound," and much testimony was presented by the complainant in support of its contention that the people of

the village of Scales Mound and the surrounding territory are now being adequately and efficiently served by the exchange maintained and operated by the Pitcher Telephone Company in the village of Scales Mound.

In its answer the respondent, The Steele Telephone Company, neither admits nor denies that it is subject to the provisions of "*An Act to Provide for the Regulation of Public Utilities*" now in force in the State of Illinois, and some emphasis is given to the fact that the company is not incorporated. Very little testimony was presented at the hearing in support of this contention. From a careful consideration of the record it is quite apparent that The Steele Telephone Company, C. E. Steele, owner, which owns, operates and manages a telephone system within the State, directly for public use, is a public utility, and as such public utility is subject to the provisions of the "*Act to Provide for the Regulation of Public Utilities.*"

The assignment of the franchise of the LaFayette County Telephone Company to The Steele Telephone Company was made without the consent and approval of this Commission and does not carry with it any right to install, operate and maintain a telephone exchange in the village of Scales Mound.

Section 29 of the "*Act to Provide for the Regulation of Public Utilities*" reads:

"No franchise, license, permit or right to own, operate, manage or control any public utility shall be assigned, transferred or leased nor shall any contract or agreement with reference to, or affecting, any such franchise, license, permit or right be valid or of any force or effect whatsoever unless such assignment, lease, contract or agreement shall have been approved by the Commission. Such permission shall not be construed to revive or validate any lapsed or invalid franchise, license, permit or right, or to enlarge or add to the powers and privileges contained in the grant of any franchise, license, permit or right, or to waive any forfeiture."

The contention of the respondent that the installation of a switchboard and the establishment of a telephone exchange in the village of Scales Mound is necessary in per-

fecting its system and extending the same so as to be able to give better service to its patrons and the public, and that, therefore, it should be permitted to proceed with that work, is not well founded. The question of public convenience and necessity is not an issue in this case, as the respondent, The Steele Telephone Company, has made no application to the Commission for a certificate of public convenience and necessity to install and operate a telephone exchange in the village of Scales Mound.

Section 55 of the Act reads:

"No public utility shall begin the construction of any new plant, equipment, property or facility which is not in substitution of any existing plant, equipment, property or facilities or in extension thereof or in addition thereto, unless and until it shall have obtained from the Commission a certificate that public convenience and necessity require such construction.

"No public utility not owning any city or village franchise nor engaged in performing any public service or in furnishing any product or commodity within this State at the time this Act goes into effect shall transact any business in this State until it shall have obtained a certificate from the Commission that public convenience and necessity require the transaction of such business."

The installation of a switchboard and the establishment of a telephone exchange in the village of Scales Mound, as proposed by the respondent, The Steele Telephone Company, is not in substitution of an existing plant, equipment, property or facility, or in extension thereof, or in addition thereto. Unquestionably it is the construction of a new plant within the meaning of Section 55 above mentioned, and this being true, the action of the respondent in undertaking to install such switchboard and establish such telephone exchange without first securing from the Commission a certificate that public convenience and necessity demand and require the establishment and operation of such telephone exchange is in violation of law.

It is, therefore, ordered, That the respondent, The Steele Telephone Company, G. E. Steele, owner, suspend all work incident to the installation and operation of a switchboard

and the establishment of a local telephone exchange in the village of Scales Mound until it has obtained from this Commission a certificate of public convenience and necessity as provided by law.

By order of the Commission, this thirty-first day of March, 1915, dated at Springfield, Illinois.

THOMAS S. THOMPSON AND DAVID F. THOMPSON *v.* PEARL
CITY INDEPENDENT TELEPHONE COMPANY *et al.*

Case No. 3351.

Decided April 8, 1915.

**Re-establishment of Physical Connection Ordered — Discontinuance of
Existing Physical Connection Ordered.**

Complainants sought the reconnection of the lines of the Pearl City Mutual Telephone Company and those of the Kent Independent Telephone Company.

On December 29, 1914, the Pearl City Independent Telephone Company forcibly disconnected a part of the system of the Pearl City Mutual Telephone Company known as the Kent Independent Telephone Company. Prior to December, 1913, the Kent company had been connected with the Pearl City Independent company but at that time had severed its connection with the Pearl City Independent company and had established a connection with the Pearl City Mutual company.

Upon connection the subscribers of the Kent company became stockholders of the Mutual company and received a stockholders' rate. When the special rate to stockholders was discontinued, certain members of the Kent company entered into an agreement with the Independent company for switching service at a rate of \$5.00 per year per telephone, and the lines serving subscribers who were formerly members of the Kent company and certain other "renters" were disconnected from the Mutual company and connected with the lines of the Independent company.

The lines and equipment of the Kent company at the time they were disconnected from the Mutual company constituted an integral part of the Mutual company's system, and the value of the service to the Mutual company subscribers was diminished by the disconnection.

Held: That if the lines of the Kent company were acquired by the Mutual company and merged with the Mutual company's lines, as contended by the complainants, neither the Independent company nor the Kent company would have the right to disconnect these lines.

That if the Kent company had never merged its property with that of the Mutual company, as contended by the defendants, nevertheless it was a public utility subject to the jurisdiction of the Commission, and by disconnecting its lines from the Mutual company and connecting them with the Independent company and operating them in connection therewith, without previously having obtained the consent of the Commission, it had violated the public utility law.

Ordered, That the defendant re-establish the connection between the lines of the Kent company and those of the Mutual company and discontinue the connection between the lines of the Independent company and those of the Kent company.

OPINION AND ORDER.

Petition in the above entitled matter sets forth that the complainants, Thomas S. Thompson and David F. Thompson, are residents of Stephenson County, Illinois; that the said Thomas S. Thompson is the manager and a stockholder of the Pearl City Mutual Telephone Company, hereinafter referred to as the "Mutual company," an unincorporated company engaged in the operation and management of a telephone system in and around the village of Pearl City, Stephenson County, Illinois; that the said David F. Thompson also is a stockholder in the Mutual company, and complaint is made by the said Thomas S. Thompson and David F. Thompson as stockholders or members of the said Mutual company and for and in behalf of all of the stockholders or members of said Mutual company and the said several officers and directors thereof.

The petition further sets forth that the defendant, Pearl City Independent Telephone Company, hereinafter referred to as the "Independent company," is a corporation engaged in the operation of a telephone system in and around the village of Pearl City, Stephenson County, Illinois.

The complainants represent that on or about December 29, 1914, the defendant, Independent company, unlawfully, and without the knowledge or consent of the officials of the Mutual company, forcibly disconnected a part of the system of the Mutual company, namely, a group of rural lines and telephones comprising what is known as the Kent Independent Telephone Company, hereinafter referred to as the

“ Kent company,” and connected this group of lines and telephones with the system of the defendant, Independent company.

No formal answer was filed by the defendants, but they appeared at the hearing and through their counsel denied substantially all the material allegations of the petition, and denied that the petitioners were entitled to the relief sought.

Hearing in this case was held at the office of the Commission at Chicago on January 27, 1915. *L. H. Burrell*, attorney, appeared for the complainants, and *Douglas Pattison* and *J. A. Clarity*, attorneys, appeared for the defendants.

It appears from the testimony presented at the hearing that the Kent company originally consisted of some forty-four rural telephone subscribers in and around the village of Kent, Stephenson County, Illinois, organized as an unincorporated mutual company, and prior to December, 1913, connected with the exchange of the Independent company at Pearl City; that in December, 1913, the Kent company, for various reasons, severed its connection with the Independent company and established a connection with the Mutual company.

The complainants contend that the connection between the Kent company and the Mutual company was effected in December, 1913, through a consolidation of the two companies; that by such consolidation the lines and telephones of the Kent company became a part and parcel of the plant of the Mutual company and that the members of the Kent company became stockholders or members of the Mutual company; that the action of the defendant, the Independent company, in forcibly connecting with its system the lines of the Kent company has resulted in confiscation of the property of the Mutual company; that this was accomplished through collusion between the Independent company and certain stockholders of the Mutual company who were formerly members of the Kent company, and that such action was in violation of the Illinois Public Utilities Commission Law.

The complainants further contend, and the testimony tends to show, that the subscribers of the Mutual company,

who were formerly members of the Kent company, became stockholders of the Mutual company, and, subsequent to the connection of the lines of the two companies, received service at a special "stockholders rate" of \$5.00 per annum, which rate applied to, and was enjoyed by, all of the "stockholder subscribers" of the Mutual company until December, 1914, when in compliance with an order of this Commission (*In re Application of the Pearl City Mutual Telephone Company for Authority to Change Rates*, No. 3136),* this special rate was discontinued and the regular schedule rate of \$12.00 per year, which applies to subscribers who are classified as "renters," was extended to all of the subscribers of the Mutual company, including the subscribers who were formerly members of the Kent company; that thereupon certain members of the Kent company, in protest of this increase in the rate, entered into an agreement with the Independent company for a switching service at the rate of \$5.00 per year per subscriber, and accordingly the lines serving the subscribers who were formerly members of the Kent company and certain subscribers classified as "renters" were disconnected from the lines of the Mutual company at a point known as Miller's Corner, which is about three miles north of Pearl City, and were connected to the lines of the Independent company.

The defendants contend that the plant of the Kent company was never legally merged with the plant of the Mutual company, but on the contrary, insist that the Kent company has throughout maintained its own organization, and control of its property, and that it had the right to, and did, negotiate with the Independent company for the establishment of the present connection, and that the establishment of such connection has not resulted in any confiscation of property and is not in violation of the Illinois Public Utilities Commission Law.

In view of the facts shown by testimony presented at the hearing, and the conclusions reached by this Commission,

* Noted in Commission Leaflet No. 40, p. 1013.

it will not be necessary, and the Commission will not attempt, to determine the ownership of the lines and telephones of the Kent company.

The question, then, to be decided is whether the Independent company and the Kent company had the right to disconnect the lines of the latter company from the system of the Mutual company and connect the said lines with the exchange of the Independent company. Regardless of the ownership of the lines and equipment of the Kent company, such lines and equipment, at the time they were so disconnected, undoubtedly constituted an integral part of the system of the Mutual company and represented approximately 20 per cent. of the total development of the Mutual company. The value of the service to the subscribers of the latter company was undoubtedly diminished by the action of the defendants in cutting off the subscribers of the Kent company as above mentioned.

It appears clear to this Commission, and, in fact, seems to be conceded by the defendant, that if the lines and telephones formerly owned by the Kent company were actually acquired by, and merged with, the system of the Mutual company, then neither the Kent company nor the Independent company would have the right to disconnect said lines from the Mutual company. On the other hand, even though it is assumed that the position of the defendants is correct, in that the Kent company has never merged its telephone property with that of the Mutual company, but has, in fact, at all times, maintained a separate and distinct organization of its own, and has never parted with the ownership or control of its said lines and equipment, then, under the facts in this case, said Kent company is, and at the time its lines were disconnected from the Mutual company was, a public utility and subject to the jurisdiction of this Commission. The question then arises as to whether either the Independent company or the Kent company violated any of the provisions of the State Public Utilities Commission Act in disconnecting said Kent company's lines from the Mutual company's system and con-

necting the same with the system of the Independent company.

Section 27 of said Act reads, in part, as follows:

"Unless the consent and approval of the Commission is first obtained;

(a) No two or more public utilities may enter into contracts with each other that will enable such public utilities to operate their lines or plants in connection with each other;

(b) No public utility may purchase, lease, or in any other manner acquire control, direct or indirect, over the franchises, licenses, permits, plants, equipment, business, or other property of any other public utility;

(c) No public utility may assign, transfer, lease, mortgage, sell or otherwise dispose of or encumber the whole or any part of its franchises, licenses, permits, plants, equipment, business, or other property; but this shall not be construed to prevent the sale, lease, assignment or transfer by any public utility of any tangible personal property which is not necessary or useful in the performance of its duties to the public;

(d) No public utility may by any means, direct or indirect, merge or consolidate its franchises, licenses, permits, plants, equipment, business, or other property with that of any other public utility."

Section 44 of said Act, in part, is as follows:

" * * * Every telephone company and telegraph company operating in this State shall receive, transmit and deliver, without discrimination or delay, the conversations and messages of every other telephone or telegraph company with which a joint rate has been established or with whose line a physical connection may have been made."

In view of the provisions of the law above referred to and from a careful consideration of the facts in this case, we are of the opinion that, regardless of the question of ownership of the lines and equipment of the Kent company, the action of the Independent company in disconnecting the lines in question from the system of the Mutual company and the connecting of said lines with the system of the Independent company was accomplished in an irregular manner and in direct violation of law.

It is, therefore, ordered, That the defendant, Pearl City Independent Telephone Company, be, and it hereby is, required and directed to re-establish, within ten days from

the date of this order, the connection between the lines of the Kent Independent Telephone Company and the lines of the Pearl City Mutual Telephone Company.

It is further ordered, That the connection between the lines of the Pearl City Independent Telephone Company and the lines of the Kent Independent Telephone Company shall be discontinued forthwith.

By order of the Commission this eighth day of April, 1915, dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF THE MURPHYSBORO TELEPHONE COMPANY FOR THE APPROVAL OF PURCHASE OF THE PROPERTY OF THE MCLEANSBORO INDEPENDENT TELEPHONE COMPANY AND FOR AUTHORITY TO MERGE SUCH PROPERTY WITH THE TELEPHONE PLANT NOW OPERATED IN THE CITY OF MCLEANSBORO BY THE MURPHYSBORO TELEPHONE COMPANY.

Case No. 3383.

Decided April 8, 1915.

Purchase at Judgment Sale of Competing Telephone System and Consolidation of Plants Authorized.

OPINION AND ORDER.

The petition in the above entitled matter sets forth that the Murphysboro Telephone Company is a corporation organized and existing under the laws of the State of Illinois, with its principal place of business at Murphysboro, and that it is a public utility engaged in the management and operation of a general telephone system throughout southern Illinois; that the petitioner is now engaged in operating a telephone system in the city of McLeansboro, which system was leased by the petitioner from the McLeansboro Telephone Company about five years ago for a period of fifteen years with the privilege and option of purchase and that the petitioner has a large number, to wit,

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419, subscribers in the said city of McLeansboro, which city has a population of about 2,000.

The petition further sets forth that the McLeansboro Independent Telephone Company, a corporation organized and existing under the laws of the State of Illinois, has been conducting a so-called mutual telephone system in the city of McLeansboro and vicinity for a number of years and has 153 subscribers in the corporate limits of the city and 115 subscribers outside of the corporate limits of the city of McLeansboro; that 50 telephone subscribers within the city have the telephone of both the Murphysboro Telephone Company and McLeansboro Independent Telephone Company.

And the petition further sets forth that the service furnished over the lines of the McLeansboro Independent Telephone Company in the city of McLeansboro is, and for sometime past has been, very unsatisfactory; that the said McLeansboro Independent Telephone Company has practically become insolvent, and that a judgment was rendered against said company before W. R. Daniel, a Justice of the Peace, in favor of Anna Graff; that under an execution issued upon such judgment all of the property of the said McLeansboro Independent Telephone Company was advertised for sale on the sixth day of January, 1915, and that at such sale, the petitioner, Murphysboro Telephone Company, bought all of said property which is located within the limits of the city of McLeansboro for the sum of \$157; that a meeting of the stockholders of the said McLeansboro Independent Telephone Company was held prior to said sale and the amount of the indebtedness against said company being about \$800, and there being no funds with which to pay such indebtedness, the said McLeansboro Independent Telephone Company applied to the petitioner, Murphysboro Telephone Company, to pay to the McLeansboro Independent Telephone Company \$800 with which to pay and discharge its indebtedness, which included the judgment above referred to, and in consideration of such payment it was agreed that the McLeansboro

Independent Telephone Company would use the \$800 to pay off its indebtedness and that it would assign and transfer its franchise and good-will in the city of McLeansboro to the petitioner, Murphysboro Telephone Company.

And the petition further sets forth that there was no other bidder at the said sale, and that it has paid the said \$800, and application is made for approval of the purchase of the property of the McLeansboro Independent Telephone Company in the city of McLeansboro and the assignment of the said franchise from the McLeansboro Independent Telephone Company to the petitioner, Murphysboro Telephone Company.

And the petition further sets forth that it is to the best interests of the city of McLeansboro and vicinity and to all of the parties therein using and requiring telephone service, that there be but one telephone system maintained and operated in the said city; that public convenience and necessity demand and require the consolidation of the telephone plant heretofore operated by the McLeansboro Independent Telephone Company and the telephone plant now operated by the petitioner, Murphysboro Telephone Company, and in support of such representations a petition addressed to the Commission, signed by 163 representative citizens of the city of McLeansboro, praying that the Commission consent to, and approve of, the proposed consolidation of the two telephone systems in the city of McLeansboro, is attached to, and made a part of, the petition filed herein.

It appears that the consolidation of the two telephone plants in the city of McLeansboro will result in an increased cost for service to the subscribers of the McLeansboro Independent Telephone Company, as the present rates of the Murphysboro Telephone Company in effect in the city of McLeansboro and the rural territory served will be extended to such subscribers. This increase in rates, however, is not opposed by the subscribers affected.

It further appears that the consolidation will effect a

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considerable saving in the abolition of duplicate exchanges and duplicate service, and satisfactory arrangements having been made to take care of the obligations of the McLeansboro Independent Telephone Company, it is the opinion of the Commission that the prayer of the petitioner should be granted.

It is, therefore, ordered, That the petitioner, Murphysboro Telephone Company, be, and it hereby is, authorized and permitted to purchase all of the property of the McLeansboro Independent Telephone Company in the city of McLeansboro, Illinois, consisting of poles, wires, fixtures, central office equipment, telephones and all appliances, including the transfer of the franchise granted the McLeansboro Independent Telephone Company by the city of McLeansboro, March 3, 1908, the said purchase to be made, in all respects, in strict accordance with the terms of the judgment sale and the agreement between the McLeansboro Independent Telephone Company and the Murphysboro Telephone Company as set forth in the petition.

It is further ordered, That the McLeansboro Independent Telephone Company be, and it hereby is, authorized and permitted to forthwith sell, transfer and convey, free of encumbrance, by a good and substantial instrument, all of its property in the city of McLeansboro, consisting of poles, wires, fixtures, central office equipment and telephone appliances, including the transfer of the franchise granted the McLeansboro Independent Telephone Company by the city of McLeansboro, March 3, 1908, the said sale, transfer and conveyance to be in all respects, in strict accordance with the terms of the judgment sale and the agreement between the McLeansboro Independent Telephone Company and the Murphysboro Telephone Company as set forth in the petition.

It is further ordered, That the Murphysboro Telephone Company be, and it hereby is, authorized to merge and consolidate the telephone plant in the city of McLeansboro formerly operated by the McLeansboro Independent Tele-

phone Company with the plant now operated by the Murphysboro Telephone Company.

By order of the Commission, this eighth day of April, 1915, dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF THE WARREN MUTUAL
TELEPHONE COMPANY OF BATH, ILLINOIS, FOR AUTHORITY
TO CHANGE RATES.

Case No. 3457.

Decided April 8, 1915.

**Discrimination in Favor of Subscribers Owning Telephones Eliminated
— Lower Rates for Switching Service than for Rural Service
Approved — Special Rate for Club Houses Ordered
Filed in Rate Schedule.**

OPINION AND ORDER.

Application in the above entitled matter sets forth that the petitioner is a public utility engaged in the management and operation of a rural telephone system in Macon County, Illinois, with its principal place of business at Bath, and that as such public utility it is subject to the provisions of an act entitled, "*An Act to Provide for the Regulation of Public Utilities*," now in force in the State of Illinois.

Application sets forth that the rates of the petitioner now in force and effect are as follows:

Rural party line telephones—lines and telephones owned by subscribers—switching service.....	\$3 00 per year
Rural party line telephones—lines and telephones owned by subscribers—limited switching service.	1 00 per year
Party line telephones—all equipment owned and maintained by company.....	12 00 per year
Party line telephones—lines owned and maintained by company; telephones owned by subscribers....	6 00 per year
Message rate for non-subscribers.....	10 per message

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Application is made for authority to change the rate charged subscribers who own their telephones and to adjust the charge for switching rural service stations, in order to discontinue the existing differences or discriminations, and to put into effect the following schedule:

Party line telephones—all equipment owned and maintained by the company.....	\$12 00 per year
Switching rural service stations.....	3 00 per year
(Lines and telephones owned and maintained by the subscribers.)	
Message rate for non-subscribers.....	10 per message
Two individual lines provided for club houses, extending 7 miles from the exchange, each line including operation and maintenance of line and telephone	50 00 per year

In the Matter of Rates and Charges Applicable to Subscribers Who Own Their Telephones, Conference Ruling No. 15,* and in other decisions heretofore made, the Commission held that it is unlawful to grant any reduction from the regular rate on account of subscribers owning their telephones. The company may purchase or rent telephones now in use by subscribers, but no subscriber shall be allowed a lower rate on account of his owning the telephone. The company shall furnish telephones whenever it becomes necessary to replace telephones now owned by subscribers, and in all new installations, the company shall furnish the instruments.

Rural telephones, owned and maintained by the subscribers and connected directly with the exchange operated by the utility, are recognized by the Commission as "rural service stations," and the rate for the service furnished by the utility should be classified as a "charge for switching rural service stations." It is obvious that the charge for switching such rural telephones may be less than the rate for rural telephones, including lines and all equip-

* See Commission Leaflet No. 37, p. 457.

ment, owned and maintained by the utility, as many elements of cost properly chargeable to rural telephone service where the utility owns and maintains all the lines and equipment are not chargeable to rural telephones, including lines and all other equipment, owned and maintained by the subscribers.

The Commission does not at this time either approve or disapprove the class rate of \$50.00 per year for the individual lines provided for club houses. This being a rate for a special class of service, and the reasonableness of all of the rates of the utility not being under consideration, it is unnecessary to determine the reasonableness of this rate at this time, and it is not included in the schedule herein authorized. The company should, however, include such rates in the schedule filed with the Commission.

It is, therefore, ordered, That the discriminatory rates and charges, as set forth in the application of the petitioner, Warren Mutual Telephone Company, shall be discontinued and the following rates substituted in lieu thereof:

Party line telephones — all equipment owned and maintained by the company.....	\$12 00 per year
Switching rural service stations.....	3 00 per year
(Lines and telephones owned and maintained by the subscribers.)	
Message rate for non-subscribers.....	10 per message

It is further ordered, That the rates herein authorized shall become effective as of March 1, 1915, and shall be filed, posted and published by said petitioner as provided by Section 34 of an act entitled, "*An Act to Provide for the Regulation of Public Utilities.*"

By order of the Commission, this eighth day of April, 1915, dated at Springfield, Illinois.

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IN THE MATTER OF THE APPLICATION OF THE LEONORE MUTUAL
TELEPHONE COMPANY FOR AUTHORITY TO CHANGE RATES.

Case No. 3575.

*Decided April 8, 1915.***Discrimination in Favor of Stockholders Eliminated — Payment Toward
Purchase of Stock Included in Yearly Rental Ordered Dis-
continued — Additional Classifications Authorized.**

OPINION AND ORDER.

This is an application for authority to discontinue discriminatory rates. Application sets forth that the petitioner is a public utility engaged in the management and operation of a telephone system in and around the village of Leonore, La Salle County, Illinois, and that as such public utility it is subject to the provisions of an act entitled, "*An Act to Provide for the Regulation of Public Utilities*," now in force in the State of Illinois.

Application further sets forth that the rates of the petitioner now in force and effect are as follows:

Members holding certificates of stock.....	\$6 00 per year
Members not holding certificates of stock.....	12 00 per year
(Membership fee, \$20.00. One-half of the amount paid by members who are not stockholders is set aside each month toward payment for certificate of stock.)	

Application is made for authority to adjust the rates, in order to discontinue the existing discriminations, and to establish the following schedule of rates:

Town telephones	\$12 00 per year
Rural telephones	6 00 per year

Conference Ruling No. 8* and other decisions heretofore made by this Commission provide that a stockholder cannot be given any greater or less or different rate than the rate charged other subscribers, and the assessment rate

* See Commission Leaflet No. 31, p. 31.

that the petitioner now has in effect for subscribers who are stockholders, which is less than the rate charged subscribers who are not stockholders, is discriminatory and unlawful.

It is, therefore, ordered, That the petitioner, Leonore Mutual Telephone Company, of Leonore, La Salle County, Illinois, shall discontinue the present practise of assessing stockholders, as set forth in the application and put into effect the following schedule of rates, which shall apply to all subscribers without discrimination:

Town telephones	\$12 00 per year
Rural telephones	6 00 per year

It is further ordered, That such change in rates shall become effective as of May 1, 1915, and the schedule of rates herein authorized shall be filed, posted and published by said petitioner as provided by Section 34 of an act entitled, "*An Act to Provide for the Regulation of Public Utilities.*"

By order of the Commission this eighth day of April, 1915, dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF THE FARINA MUTUAL
TELEPHONE COMPANY FOR AUTHORITY TO CHANGE RATES.

Case No. 3447.

Decided April 22, 1915.

**Discrimination in Favor of Stockholders Eliminated — Party Line Rates
Reduced — Switching Rates Adjusted — Rule Requiring
Payment in Advance Considered.**

OPINION AND ORDER.

This is an application for authority to discontinue discriminatory rates and charges as between subscribers who are stockholders and subscribers who are not stockholders, and to adjust the rate for party line telephones and the rate

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for switching "rural service" subscribers. Application sets forth that the petitioner is a public utility engaged in the management and operation of a rural telephone system in and around the village of Farina, Fayette County, Illinois, and that as such public utility it is subject to the provisions of "*An Act to Provide for the Regulation of Public Utilities*," now in force in the State of Illinois.

Application further sets forth that the rates of the petitioner now in force and effect are as follows:

Rented telephones — individual lines.....	\$12 00 per year
Rented telephones — party lines.....	12 00 per year
(Discount of \$2.00 applies to the rate for party line telephones if paid yearly, in advance.)	
Switching charge for rural lines owned and maintained by subscribers, per line.....	18 00 per year
Stockholders' telephones	No fixed rate
(An assessment is levied against stockholders from time to time to cover deficits.)	

The petitioner proposes to discontinue the present practice of assessing stockholders, also the rate of \$18.00 per year for switching rural lines owned and maintained by the subscribers, and substitute therefor a switching charge per subscriber, and application is made for authority to put into effect the following schedule of rates:

Individual line telephones.....	\$12 00 per year
Party line telephones.....	10 00 per year
Switching charge for "rural service" stations, per subscriber	2 00 per year
All rentals payable quarterly, in advance.	

Conference Ruling No. 8* and other decisions heretofore made by this Commission provide that a stockholder cannot be given any greater or less or different rate than the rate charged other subscribers, and the assessment rate that now applies to subscribers who are stockholders is discriminatory and unlawful.

* See Commission Leaflet No. 31, p. 31.

The proposed charge for switching "rural service" subscribers, which is fixed on a per-station basis, does not appear to be unreasonable and is a more equitable rate than a rate fixed on a per-line basis, as the number of subscribers connected with each line varies.

The Commission does not at this time either approve or disapprove the rule which provides for the payment of rentals quarterly, in advance. It is recognized that a telephone company has the right to establish rules and regulations governing the conduct and operation of its business when such rules and regulations are reasonable in their requirements, and a rule which provides for the payment of telephone rentals in advance appears to be a reasonable regulation.

It is, therefore, ordered, That the present schedule of rates and charges of the petitioner, Farina Mutual Telephone Company, shall be discontinued and the following schedule substituted in lieu thereof:

Individual line telephones.....	\$12 00 per year
Party line telephones.....	10 00 per year
Switching charge for rural service stations, per subscriber	2 00 per year
All rentals payable quarterly, in advance.	

It is further ordered, That the rates herein authorized shall become effective as of May 1, 1915, and shall be filed, posted and published by the petitioner as provided in Section 34 of an act entitled, "*An Act to Provide for the Regulation of Public Utilities.*"

By order of the Commission, this twenty-second day of April, 1915, dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF THE STARK COUNTY
TELEPHONE COMPANY FOR AUTHORITY TO CHANGE RATES.

Case No. 3518.

Decided April 22, 1915.

**Discrimination in Favor of Stockholders, and Subscribers Owning
Telephones, Eliminated — Combination Rates Prohibited.**

OPINION AND ORDER.

This is an application for authority to discontinue discriminatory rates. Application sets forth that the petitioner is a public utility engaged in the management and operation of a telephone system, consisting of local exchanges and connecting lines, in Stark and Marshall Counties, Illinois, with its principal place of business at Toulon. Exchanges are operated at Toulon, Wyoming, Elmira, Castleton, Duncan and Camp Grove.

Application further sets forth that the rates of the petitioner now in force and effect are as follows:

TOULON AND WYOMING EXCHANGES.

24-Hour Continuous Service.

Business telephones — non-stockholders	\$1 60 per month
Business telephones — stockholders	1 35 per month
Business telephones on same line with residence tele- phones	1 20 per month
Residence telephones on same line with business tele- phones	85 per month
Individual line residence telephones—non-stockholders	1 35 per month
Individual line residence telephones — stockholders..	1 10 per month
Party line telephones—all equipment owned and main- tained by the company.....	1 10 per month
Party line telephones—subscriber owning and main- taining the instrument.....	85 per month
(Subscribers under each of the above classifica- tions receive service over the entire system of the company.)	
Party line telephones — service limited to local ex- change; company furnishing and maintaining all equipment	75 per month
Party line telephones — service limited to local ex- change; subscriber owning and maintaining instru- ments	50 per month

ELMIRA, CASTLETON, DUNCAN AND CAMP GROVE EXCHANGES.

16-Hour Daily Service.

Business telephones — non-stockholders	\$1 50 per month
Business telephones — stockholders	1 25 per month
Business telephones on same line with residence tele- phones	1 15 per month
Residence telephones on same line with business tele- phones	75 per month
Individual line residence telephones—non-stockholders	1 25 per month
Individual line residence telephones — stockholders...	1 00 per month
Party line telephones — all equipment owned and maintained by the company.....	1 00. per month
Party line telephones — subscriber owning and main- taining the instrument	75 per month
(Subscribers under each of the above classifica- tions receive service over the entire system of the company.)	

Application is made for authority to discontinue the discriminatory rates that apply to subscribers who are stock-

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holders and to subscribers who own their telephones; also the reduced rates that apply to business telephones and residence telephones connected on the same lines.

Conference Ruling No. 8,* *In the Matter of Rates or Charges Applicable to Stockholders, Directors and Officers of Public Utilities*, provides that a stockholder cannot be given any greater or less or different rate than the rate charged other subscribers.†

In the Matter of Rates and Charges Applicable to Subscribers Who Own Their Telephones, Conference Ruling No. 15,‡ and in other decisions heretofore made, the Commission held that it is unlawful to grant any reduction from the regular rate on account of subscribers owning their telephones.§

In the Matter of Rates, Rules and Classifications of Telephone Service in Illinois, Conference Ruling No. 13,¶ the Commission ruled:

* See Commission Leaflet No. 31, p. 31.

† Orders requiring the elimination of discrimination in favor of stockholders were issued in cases involving the following companies:

<i>A. B. C. Telephone Company</i>	No. 3544, April 8, 1915.
<i>Macedonia Telephone Company</i>	No. 3554, April 8, 1915.
<i>Cornell Telephone Company</i>	No. 3464, April 22, 1915.
<i>Knoxville Farmers Telephone Company</i>	No. 3620, April 22, 1915.
<i>Putnam Telephone Company</i>	No. 3674, April 22, 1915.
<i>Greenview Telephone Company</i>	No. 3725, April 22, 1915.

‡ See Commission Leaflet No. 37, p. 457.

§ Orders requiring the elimination of discrimination in favor of subscribers owning telephones were issued in cases involving the following companies:

<i>Farmers Telephone Company of Waynesville</i>	No. 3435, April 8, 1915.
<i>Tower Hill Telephone Company</i>	No. 3264, April 22, 1915.
<i>Roanoke Telephone Company</i>	No. 3407, April 22, 1915.
<i>Strawn Telephone Company</i>	No. 3434, April 22, 1915.
<i>Fayette Home Telephone Company of St. Elmo, Illinois</i>	No. 3452, April 22, 1915.
<i>Westfield Mutual Telephone Company</i>	No. 3596, April 22, 1915.
<i>Galva Telephone Company</i>	No. 3606, April 22, 1915.
<i>Queen City and Shelby County Telephone Company</i>	No. 3667, April 22, 1915.

¶ See Commission Leaflet No. 34, 1008.

"f. Every telephone company which offers business and residence rates should publish a separate and distinct rate for business telephones and for residence telephones, and a so-called combined rate for a business telephone and a residence telephone which is less than the sum of the regularly published residence and business rates, is unlawful."

It appears that the proposed changes in the schedules of the petitioner do not involve any increases in rates, and that all discriminations can be discontinued by the utility conforming its rates, rules and classifications to the provisions of Conference Rulings No. 8, 13 and 15.

It is, therefore, ordered, That the petitioner, Stark County Telephone Company, of Toulon, Illinois, shall immediately discontinue all discriminatory rates or charges, as set forth in the application, and charge to all subscribers, without discriminations, the regular schedule rates, as set forth in the following schedules:

TOULON AND WYOMING EXCHANGES.

24-Hour Continuous Service.

Individual line business telephones.....	\$1 60 per month
Individual line residence telephones.....	1 35 per month
Party line residence telephones.....	1 10 per month
Rural party line telephones.....	1 10 per month

(Subscribers under each of the above classifications receive service over the entire system of the company.)

Party line residence telephone—service limited to local exchange	75 per month
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ELMIRA, CASTLETON, DUNCAN AND CAMP GROVE EXCHANGES.

16-Hour Daily Service.

Individual line business telephones.....	\$1 50 per month
Individual line residence telephones.....	1 25 per month
Party line residence telephones.....	1 00 per month

(Subscribers under each of the above classifications receive service over the entire system of the company.)

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It is further ordered, That the change in rates herein authorized shall become effective as of May 1, 1915, and that the above schedules shall be filed, posted and published by said petitioner as provided by Section 34 of an act entitled, “An Act to Provide for the Regulation of Public Utilities.”

By order of the Commission, this twenty-second day of April, 1915, dated at Springfield, Illinois.

INDIANA.

Public Service Commission.

IN THE MATTER OF THE APPLICATION OF THE LAFAYETTE TELEPHONE COMPANY FOR APPROVAL OF ITS RULES AND REGULATIONS.

Case No. 1042.

Decided February 5, 1915.

Rules and Regulations Concerning Rates and Service Approved.

On the ninth day of October, 1914, the Lafayette Telephone Company applied to the Public Service Commission of Indiana by petition, asking for authority to put into effect certain rules and regulations, setting forth in said petition that at the time it filed its schedule of rates, tolls, and charges for its telephone service, * * * it did not understand and know that the law required the filing of rules and regulations governing its business, and therefore, on account of such misunderstanding, it failed to file its rules regulating its business. The Lafayette Telephone Company asks for authority to establish and put into effect the following rules and regulations:

"1. A patron of the company in first subscribing for its service must contract for such service for one year, after which the contract shall be self-renewing for consecutive terms of three months each, the contract to be terminated at the end of any term for which the same shall be in force by thirty days' previous written notice from either party to the other.

"2. Payments for services for the first three months must be paid in advance, after which such service may be paid quarterly in advance or monthly in advance at the option of the subscriber; all payments to be made at the office of the company.

"3. Applicants for telephone service at a designated location shall contract for service for one year. Should service be desired at any other location not designated in contract during such year, a charge of \$2.00 will be made for each and every new location. After the expiration of such contract a change of location for service may be made without

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charge by subscriber signing a new contract for another year upon the same conditions as above set forth.

"4. If the telephone instrument or its connections are maliciously or purposely injured, the subscriber must pay for the damage done to such instrument or its connections.

"5. A patron who pays monthly shall pay at the office of the company on or before the first day of the month for which the service is to be rendered. If such payment is not made on or before the fifteenth of such month, his telephone service shall be discontinued.

"A patron who pays quarterly shall pay at the office of the company his quarterly rental on or before the first day of the first month of the quarter for which the service is to be rendered. On failure to pay by the fifteenth of such month, his service shall be discontinued.

"Against all subscribers who fail to pay as above provided, a charge of 50 cents shall be made and collected for disconnecting and reconnecting the service, except where the subscriber resides outside of Lafayette or West Lafayette, in which case the charge for disconnecting and reconnecting the service will be \$2.00.

"6. The telephone instruments provided by the company are a part of the exchange system, subject to the rules of the company, and are to be used only by the subscriber, his tenants, or employees when engaged in the subscriber's business only, and not to be used for receiving, transmitting, or delivering any message or communication in respect to which a consideration has been or is to be paid to any party other than said company, except as may be permitted by the rules of the company. Said instruments are not to be removed from said premises by anyone except the representative of the company, or connected with any instrument or apparatus not furnished by the company.

"7. The prefix and number assigned to a subscriber's telephone are no part of the contract with said company, and may be changed by said company at any time as the exigencies of the business may require.

"8. A representative of the company shall have the authority at any proper time to enter upon the premises of the subscriber for the purpose of doing all the necessary work in relation to the instrument and its connections.

"9. The company shall in no case be liable for damages accruing from errors or omissions in the compilation or printing of its directory.

"10. Any person who has a delinquent account with the company is not accepted as a subscriber until such delinquent account is paid."

The Public Service Commission of Indiana, being fully advised in the premises, finds that said rules regulating the business of the Lafayette Telephone Company are reasonable rules, and should be and are hereby approved.

IN THE MATTER OF THE APPLICATION OF FARMERS AND MERCHANTS CO-OPERATIVE TELEPHONE COMPANY OF BOSWELL, INDIANA, FOR AUTHORITY TO ISSUE STOCK.

Case No. 1323.

Decided March 12, 1915.

Issue of Stock Authorized Although Proceeds to be Used in Duplicating Existing Plant — Commission Without Power to Regulate Duplication of Facilities Outside of Municipalities — Issue of Stock Without Authority of Commission Ratified.

The petitioner sought authority to issue and sell its common stock at par for cash, and further sought ratification of its issue and sales of stock previously made without authority of the Commission.

The Boswell Telephone Company filed its objection, alleging that the proceeds of the proposed stock issue, as well as those of the stock previously issued without the Commission's consent, were to be used in the construction of a telephone plant in Benton and Warren counties which would be in duplication of the Boswell company's plant.

Held: That the Commission has no power to regulate duplication of facilities outside of municipalities;

That, as the legislature has not granted the Commission legislative powers, and as the arbitrary determination as to whether or not stock may be issued is a legislative power, this power has not been conferred upon the Commission; that the duty of the Commission is to investigate and determine the facts in each case, and if the facts which the legislature provides must exist do exist, the authority must be granted;

That as the petitioner has complied with all the requirements of the law, the Commission has no discretion in the matter and cannot refuse authority to issue stock even though the proceeds of said stock are to be used to build a plant outside of municipalities in duplication of an existing plant;

That as the proceeds of the stock issued without the authority of the Commission had been used for proper purposes, ratification of this issue, upon payment of the statutory fee to the State, can do "no great violence * * * to either the letter or the spirit of the law."

In this case the petitioner asks authority to issue and sell common stock at its par value for cash, and that the Commission ratify sales of said stock heretofore made without having first procured authority from this Commission to make such sales.

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The facts are that the petitioner is a corporation duly organized under the laws of this State to engage in the business of owning and operating a telephone exchange in certain parts of Benton and Warren counties, in country districts. The authorized capital stock is \$12,000 in shares of the par value of \$25.00 each. The organizers of the corporation are for the most part farmers residing in the territory to be served by the proposed telephone plant.

Prior to the filing of the petition in this case there was, and is now, an incorporated telephone company owning and operating a telephone plant, a part of which extends into a part or all of the territory sought to be served by the petitioning company. This said telephone plant has its principal place of business in the incorporated town of Boswell, and its corporate name is the Boswell Telephone Company, and it is operating in said town under a franchise or indeterminate permit. A petition was filed with this Commission, praying the Commission to issue a certificate of convenience and necessity, and authorizing the town board of said incorporated town of Boswell to grant to this petitioning company, or someone for the purpose of assigning the same to this petitioning company, an indeterminate permit authorizing this petitioner to construct and operate a telephone plant in the said town of Boswell. And upon the hearing had, the prayer of said petition was denied. And it is now proposed by the petitioning company to construct its plant in the rural districts aforesaid with an exchange near the corporate limits of said town of Boswell. The petitioner has already sold for cash at par, and without first obtaining the permission of this Commission so to do, 118 shares of its capital stock, and has expended \$1,452.23 of the funds arising from that sale of stock in purchasing material, advertising, attorneys' fees, and in the constructing of its proposed plant. And it will require for the completion of the plant it desires to construct an expenditure of the entire sum that it may realize if it sells its entire issue of stock at par.

The Boswell Telephone Company is resisting the efforts of the petitioning company to construct said telephone plant, and has, with the permission of the Commission, filed in this case its objection to the granting of authority to the petitioner to sell its stock, for the reason that the proposed telephone plant will be a duplication of the plant of the Boswell Telephone Company. The petitioner has procured from the board of commissioners of Benton County, and from the board of commissioners of Warren County, franchises authorizing the construction of the telephone plant which they desire to build.

These facts present the question of the power and duty of this Commission in granting or refusing to grant authority to public utilities to issue stock or bonds to be sold for the purposes of the utility. We assume it to be fundamental that the legislature could not, and has not attempted to, grant to this Commission legislative powers; and further, that the arbitrary determination that stocks and bonds may or may not be issued is the exercise of legislative power, and any law which attempted to place in the hands of this Commission said arbitrary authority would be unconstitutional. The law creating the Public Service Commission of the State of Indiana stipulates when and for what purposes a public utility corporation may issue stock or bonds, setting out in detail the necessary conditions that must exist before such stock or bonds may be issued, and then casts upon this Commission the burden and duty of conducting an investigation and determining the fact or facts in each case, and then provides that if the facts which the legislature provide must exist, do exist, the authority shall be granted.

It is provided in the act that if " a public utility desires to issue stocks, certificates of stock, bonds, notes, or other evidences of indebtedness, payable in more than one year from date, with respect to the public utility owned or operated by it, it shall file with the Commission a statement verified by its president and secretary, or two of its incorporators or owners, if it have no such officers, setting forth

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(a) the amount and character of the securities proposed to be issued; (b) the purpose for which they are to be issued; (c) the description and estimated value of any property to be acquired through the said issue; (d) the amount of cash to be received for said securities; (e) the financial condition of the public utility and its previous operations so far as relevant. For the purposes of enabling it to determine whether the proposed issue complies with the provisions of this act, the Commission shall make such inquiry or investigation, hold such hearing, and examine such witnesses, books, papers, documents, or contracts as it may deem of importance in enabling it to reach a determination.

“ If the Commission shall determine that such proposed issue complies with the provisions of this act, such authority shall thereupon be granted, and it shall issue to the public utility a certificate of authority.”

The word “ shall ” has no uncertain meaning. If the provisions of the act are complied with by the conditions surrounding the proposed issue, authority shall be granted.

These provisions are that no such issue may be made “ to an amount exceeding that which may, from time to time, be reasonably necessary, determined as herein provided, for the purpose for which such issue of stock, certificates of stock, bonds, notes, or other evidences of indebtedness may be authorized.”

“ No public utility shall issue any stock or certificate of stock, except in consideration of money or of labor or property at its true money value as found and determined by the Commission actually received by it.”

“ No public utility shall issue any bonds, notes, or other evidences of indebtedness, except for money or labor or property estimated at its true money value, as found and determined by the Commission, actually received by it equal to a sum to be approved by the Commission not less than 75 per cent. of the face value thereof.”

“ A public utility as defined in Section 1 of this act may with the approval of the Commission, issue stock, certificates of stock, bonds, notes, or other evidence of indebted-

ness payable at periods of more than twelve months after the date thereof, when necessary for the acquisition of property, the construction, completion, extension, or improvement of its facilities, plant, or distribution system, or for the improvement of its service, or for the discharge of or lawful refunding of its obligations, or for the reimbursement of moneys actually expended from income, or from any other moneys in the treasury of the public utility for such purposes, not secured or obtained from the issue of stock or bonds," etc.

These are all the conditions requisite to an issue of stocks or bonds, except the very indefinite and uncertain one that "the amount of bonds, notes, and other evidences of indebtedness which any public utility may issue shall bear a reasonable proportion to the amount of stock and certificates of stock issued by such utility."

The statute has not attempted in any form to confer upon the Commission any power to regulate the question of duplication of properties outside of municipalities, and under the definition of municipalities as found in the act, counties and townships are not included. And it may be noted in this connection that during the session of the legislature just closed, one or more bills was or were introduced for the purpose of conferring such power on the Commission, and all the bills failed of enactment, so that it may be said, if we have any expression at all from the legislature on this subject, it is against conferring such power on the Commission.

The Commission determines that the existing facts in this case meet all the requirements of the law, and that we have no discretion to refuse authority to issue the stock as prayed for.

The question of the ratification of the acts of the corporation as to the issuing of the 118 shares is not so clear, but we assume that if the fee is paid to the State of Indiana for this issue as for the authority to issue the remaining stock, and the Commission directs the expenditure of the money

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arising from such sale, which has not already been expended, that no great violence can be done to either the letter or the spirit of the law.

It is, therefore, ordered by the Public Service Commission of Indiana, That the action of the Farmers and Merchants Co-operative Telephone Company in the issuing and sale of 118 shares of its capital stock for cash at par be, and the same is hereby, ratified by the Commission, and the expenditure of so much of the funds arising from the sale as has been made and reported to this Commission is likewise ratified.

It is further ordered, That said company be, and is hereby, authorized to sell the remaining shares of its entire issue of \$12,000 face value of common stock at par for cash, and the proceeds arising from such sale, and the proceeds arising from the previous sale of its capital stock not already expended, may be expended in the purchase of material and equipment, and in paying for labor for the construction of its telephone plant in the territory above mentioned, and that said company pay to the State of Indiana a fee of \$18.00, and upon the payment of the same the secretary of this Commission is directed to issue a certified copy of this order to the said petitioner, as its authority to make such sale and to expend said money.

The petitioner is ordered, To make to this Commission within six months from this date a report of its sale of stock, and the expenditure of the funds arising from such sale, and to make a similar report each ninety days thereafter until such funds are all expended. Said reports are to be verified by the president and secretary of the corporation.

CUMBERLAND TELEPHONE AND TELEGRAPH COMPANY *Ex Parte*.

Case No. 1248.

SOUTHERN TELEPHONE COMPANY OF INDIANA *Ex Parte*.

Case No. 1447.

Decided April 23, 1915.

**Sale of All Telephone Property in Indiana by a Foreign Corporation to
a Domestic Corporation Formed to Take Over Said Property
Authorized — Issue of Stock by Purchasing Company
Authorized.**

OPINION AND ORDER.

On the twelfth day of January, 1915, the Cumberland Telephone and Telegraph Company filed with the Public Service Commission its duly verified petition which was numbered Cause No. 1248, wherein it alleges that it, the Cumberland Telephone and Telegraph Company, is a corporation organized and existing under and pursuant to the laws of the Commonwealth of Kentucky, and that it owns, operates and manages, and for many years last past has owned and operated divers plants, properties and equipment with which it furnished and now furnishes a general telephone service in the State of Indiana, and is a public utility in the meaning of the Act of the General Assembly of the State of Indiana creating the Public Service Commission of the said State. That it owns, operates and controls telephone exchanges in Indiana at the following named cities and towns and in the country districts adjacent thereto, to wit: Birdseye, Booneville, Borden, Bristow, Cannellton, Celestine, Charleston, Chrisney, Corydon, Dale, English, Evansville, Ferdinand, Gentryville, Georgetown, Grand View, Greenville, Griffin, Hatfield, Henryville, Hosmer, Huntingburg, Jasper, Jeffersonville, Lamar, Leavenworth, Lynnville, Marengo, Mt. Vernon, New Albany, New Harmony, Newtonville, Oakland City, Oliver, Otwell, Patoka, Petersburg, Portersville, Princeton,

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Richland, Rockport, Salem, Savah, Sellersburg, St. Meinrad, Tell City, Tennyson, Troy, Utica, Winslow, Newburg; that it has altogether, in connection with said exchanges, 18,306 stations, and a plant which would cost new \$2,050,400, and which is now worth, after deducting depreciation, \$1,791,500, and this value includes physical properties only, and excludes all franchise values and intangible values of every description; that the petitioner and the owner of said properties desire to place the control of said properties entirely under the Public Service Commission of the State of Indiana and to accomplish that purpose will organize a corporation under the laws of Indiana and sell and transfer to said new corporation said telephone properties at said value of \$1,791,500 if authorized by the Public Service Commission of Indiana to so sell and transfer the same, and it asks in said petition for authority to make such sale.

Upon the filing of this petition the Public Service Commission designated the fifth day of April, 1915, as the date for hearing on said petition and directed the petitioner to give notice of said date by publishing a notice in at least one newspaper in each municipality where the petitioner had an exchange or in the county where such exchange was located if there was such a newspaper published, and by serving a copy of the notice on the mayor or president of the board of trustees, as the case might be, of each municipality in which an exchange was located.

On the date set for the hearing said petitioner appeared by *Brill, Hatfield and Brady*, its attorneys, and made proof of the publishing and service of said notice from which it appeared to the satisfaction of the Commission that the notice had been published and served as required by direction of the Commission. And a hearing was had on the petition, and the evidence introduced established to the satisfaction of the Commission the averments of the petition. And the petitioner was directed to cause said proposed corporation to be organized in Indiana, and, when organized, to file its petition for authority to purchase said

telephone properties and to issue the required amount of stock for that purpose.

On the nineteenth day of April, 1915, the Southern Telephone Company of Indiana filed its petition which was numbered Cause No. 1447, wherein it alleges that it is a corporation chartered under the laws of the State of Indiana on the tenth day of April, 1915, for the purpose of establishing, maintaining and operating telephones, telephone lines and telephone exchanges in the State of Indiana under and pursuant to the provisions of Chapter 50 of Burns' Annotated Indiana Statutes, Revision of 1914; that its capital stock consists of 30,000 shares of the equal value of \$100 each; that, if authorized to do so, it will acquire all of the property, real, personal and mixed, including all the rights, franchises and privileges situate and located in the State of Indiana, more specifically set out in said petition and now owned by the Cumberland Telephone and Telegraph Company, together with all of the said latter company's business and contracts attached to and connected with such properties of said latter company. And said petitioner, the Southern Telephone Company of Indiana, asks to be granted authority to purchase said property and business from said Cumberland Telephone and Telegraph Company for the sum of \$1,791,500, and for authority to issue its capital stock in the sum of \$1,870,000, par value, and of said issue to exchange \$1,791,500 par value of said stock for said telephone exchanges, properties and franchises, and to sell \$78,500 par value of said stock at par for cash and to use the proceeds from such sale in acquiring the extensions and additions constructed by the Cumberland Telephone and Telegraph Company since October 31, 1914, and the accounts receivable now held and due said Cumberland Telephone and Telegraph Company and for working capital and for future extensions and additions to the plant and other corporate purposes of said Southern Telephone Company of Indiana.

Said Southern Telephone Company of Indiana has no stock now outstanding and no property or assets. The said

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company had not at the time of filing the petition elected officers and the petition is duly verified by two of the incorporators. The Commission finds and determines that the property proposed to be sold by the Cumberland Telephone and Telegraph Company and purchased by the Southern Telephone Company of Indiana is of the reasonable value of \$1,791,500 and the prayer of the said two petitions ought to be granted and said Cumberland Telephone and Telegraph Company authorized to sell said property free of encumbrance and said Southern Telephone Company of Indiana authorized to purchase same free of all encumbrance for said sum and to issue its stock at par in payment of the same.

It is, therefore, ordered by the Public Service Commission of Indiana, That the Cumberland Telephone and Telegraph Company of Kentucky be, and is hereby, authorized to sell its properties, plants, exchanges and franchises above described, being all of the property owned by said company in the State of Indiana and used for telephone purposes to the Southern Telephone Company of Indiana and the Southern Telephone Company of Indiana be, and is, authorized to purchase said property free of all encumbrance for the sum of \$1,791,500.

It is further ordered, That the said Southern Telephone Company of Indiana be and is hereby authorized to issue capital stock of the par value of \$1,870,000 and of said issue to exchange \$1,791,500 par value of said stock for said property and in full payment therefor, and to sell \$78,500 par value of said stock for cash at par and to use the proceeds thereof in acquiring the extensions and additions constructed by the Cumberland Telephone and Telegraph Company to said plant since October 31, 1914, and the accounts receivable now held and due said Cumberland Telephone and Telegraph Company, said accounts being guaranteed by said latter company, and for working capital and for future extensions and additions to the plant and for other corporate purposes of the said Southern Telephone Company of Indiana, and for no other pur-

poses, and said Southern Telephone Company of Indiana is ordered to make a full report of its doings in the premises to this Commission, which report shall be duly verified by its president and secretary.

When the said Southern Telephone Company of Indiana has paid to the State of Indiana a fee of \$2,805 the Secretary of this Commission is directed to issue a duly certified copy of this order to the petitioners, which shall be their sufficient authority to perform and do the things herein authorized and ordered.

Indianapolis, Indiana, April 23, 1915.

IN THE MATTER OF DAVID R. FORGAN, *et al.*, FOR A SCHEDULE
OF TELEPHONE RATES AT CRAWFORDSVILLE, INDIANA.

Case No. 1463.

Decided April 26, 1915.

**Establishment of New Schedule of Rates Authorized — Discrimination
Eliminated.**

ORDER.

The petitioners herein, David R. Forgan, Edward S. Bloom, Frank F. Fowle, John A. Moriarty, Receivers for the Central Union Telephone Company, and the Commercial Association of Crawfordsville, Indiana, and the city of Crawfordsville, Indiana, by their joint petition allege that there is a discrimination in telephone rates in the city of Crawfordsville growing out of the consolidation of two telephone companies which before their consolidation had different rates and classes of service; that there now exists for individual business service two different rates, to wit: \$3.00 and \$2.00 respectively; for individual residence service there are three different rates, to wit: \$1.00, \$1.25, and \$1.50; and that rural subscribers pay \$1.00 per month; that all of these different classes of telephone users receive the same service regardless of the

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fact that different rates are charged. And the petitioners ask that the Commission issue a tentative order authorizing an individual business rate of \$3.00 per month, an individual residence rate of \$1.25 per month, and rural rate of \$1.25 per month; all party lines except the rural class to be eliminated; that said rates be authorized to take effect July 1, 1915.

The Commission determines that the prayer of the petition ought to be granted.

It is, therefore, ordered by the Public Service Commission of Indiana, That the Central Union Telephone Company by its receivers, David F. Forgan, Edward S. Bloom, Frank F. Fowle and John A. Moriarty, be authorized to file a schedule of rates for the exchange of said telephone company in Crawfordsville, Indiana, making an individual service charge of \$3.00 per month, an individual residence charge of \$1.25 per month, and rural charge of \$1.25 per month, becoming effective July 1, 1915, and said telephone company by its receivers is directed to file with this Commission a schedule of rates in accordance herewith, which rates are now hereby approved.

Indianapolis, Indiana, April 26, 1915.

KANSAS.

Public Utilities Commission.

NORTHEAST KANSAS TELEPHONE COMPANY *v.* HIAWATHA MUTUAL TELEPHONE COMPANY.

Docket No. 855.

Decided January 20, 1915.

Use of Joint Line Between Exchanges for Toll Service Not Ordered.

The complainant and respondent had constructed a joint line between their exchanges in Hiawatha, which they were using for the interchange of local messages. Complainant alleged that it had agreed with the respondent to use this line for toll purposes and that said line had been used for the transmission of toll messages, but that the respondent now refuses to accept toll calls over this line from the line of the complainant.

Held: That as there had been no "meeting of minds" of the officers of the complainant and respondent companies, no legal contract for the use of this line for toll service had been made;

That, as the service in question had never been installed and regularly used for the transmission of toll messages, there had not been created a "practice pertaining to the service" which could not be changed without the consent of the Commission.

OPINION.

KINKEL, *Commissioner*:

The complainant, in formal complaint, alleges that

"The complainant and respondent companies did, by mutual agreement, and at equal expense, build and install in and between their respective offices in Hiawatha, Kansas, a metallic toll trunk line, for the interchange of toll messages originating on the lines of the respondent company for parties or places reached by the lines of the complainant and its connecting lines; that said service was installed and regularly used for the transmission of messages as above set forth, on June 19, 1914, and that the subscribers and toll stations served by the complainant were duly notified of the additional facility; that the respondent, without cause, refuses to accept calls from the lines of the complainant for parties on the lines of the respondent company, greatly to the inconvenience of the subscribers and patrons of the complainant,"

and prays that "an order be made that service be immediately restored."

The answer of respondent alleges that "a physical connection between said exchange offices was made by J. G. Kale, its manager, subject to the approval of the board of directors of said respondent, and that afterwards, at a meeting of the board of directors of the respondent, said connection was not approved, and no service over said line was extended or accepted as alleged in said complaint." It especially denies that "there was any mutual agreement or contract for said connection, as alleged in complainant's complaint," and further questions "the right, power, or jurisdiction" of the Commission "to hear and determine matters relating to the existence of such alleged agreement, or whether or not such alleged agreement was properly entered into by the parties hereto."

The testimony of the complainant is to the effect that on June 17, 1914, Mr. A. J. Stevens, its president, and Mr. William Morisse, the president of the respondent company, held several consultations in reference to the conditions of a contract to govern the proposed connection, to be used for the transmission of toll messages, it being the opinion of Mr. Stevens that all business originating from his company's connections or its own system, destined to the individual exchange of the respondent company, the Hiawatha system, should be transmitted over the proposed trunk-line connection.

The testimony of Mr. Morisse, president of the Hiawatha Mutual Telephone Company, shows that his understanding of the arrangement was to the effect that only messages originating at, and destined to, the towns of Well, Falls City, White Cloud, Troy, Wathena, and Bendena should be transmitted through the connecting trunk line in question. He further testified that he was without authority, as president of his company, in the matter of entering into contracts with competing telephone companies.

There was also introduced in evidence a certified copy of the minutes of a special meeting of the board of directors

of the Hiawatha Mutual Telephone Company, held on June 20, 1914, at which the verbal agreement in question was, by a unanimous vote of the directors of said company, formally rejected.

The testimony is very clear on the proposition that the purported agreement was an oral one. It naturally follows that it would have been practically impossible for the parties hereto to have complied with the provisions of Section 11, Chapter 238, Laws of 1911, which are that every public utility doing business in Kansas, over which this Commission has control, "shall furnish said Commission with copies of all rules, regulations, and contracts between common carriers or public utilities, pertaining to any and all services to be rendered by such public utility or common carrier."

The Commission does not deem it necessary, at this time, to consider the legal effect upon a purported contract, in case of failure to file a copy of same with the Commission, as provided for in the section just quoted; nor does it deem it necessary to consider the objection made by the respondent in reference to its "power or jurisdiction to hear and determine matters relating to the existence of such alleged agreement."

It is a primal and well-established proposition of law that the minds of the contracting parties must meet on the conditions and subject-matter of the contract. It is very clear from the testimony in this case that there was no "meeting of the minds" in the matters involved in the alleged contract, and therefore the Commission finds that there was, in fact, no legal contract made and entered into by and between the parties hereto.

The only remaining question involved is that of the "installation and regular use" of the trunk line between the two exchanges in question, which trunk line was, in fact, built and is now in actual use for the transmission of local messages between said exchanges, and which, from the testimony, seem to have been a necessary additional equipment to enable the parties hereto to properly discharge

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their duties to the public in so far as the transmission of certain local messages between said exchanges is concerned.

Section 20, Chapter 238, Laws of 1911, provides:

"No change shall be made in any rate, toll, charge, or classification, or schedule of charges, joint rates, or in any rule or regulation or practice pertaining to the service or rates of any such public utility or common carrier, without the consent of the Commission."

Under this law, the Commission has repeatedly held that no established service or "practice pertaining to the service" of any public utility can be varied, modified, or discontinued without the consent of the Commission. So it is obvious that the question in this case is whether or not the practice of transmitting toll messages over the trunk-line connection made between the exchanges of the parties hereto was, in fact, "installed and regularly used," as alleged in the complaint, so as to create and establish a "practice pertaining to the service."

The testimony is undisputed that on June 19, 1914, the Northeast Kansas Telephone Company transmitted a toll call through one of the said trunk lines, to the exchange of the respondent company, for one Julius Goodwin; but that party was not found, and the call was therefore afterward canceled and hence never completed. On the same date, a call was received by the Northeast Kansas Telephone Company from a Mr. Kirby, of Troy, Kansas, for C. I. Stocking, the local manager of said company at Hiawatha. The operators of said company were aware of the fact that Mr. Stocking, the manager, was, at that time, in the exchange of the Hiawatha Mutual Telephone Company, and transmitted this call over one of the trunk lines in question, to said exchange, and Mr. Stocking completed the call by conversing with the said Kirby, at Troy, Kansas. The testimony therefore agrees, without contradiction, that the only completed toll message delivered over the trunk lines in question was the conversation had between the said Mr. Kirby and Mr. Stocking, the manager of the Northeast Kansas Telephone Company at Hiawatha. It does not

seem to the Commission that the delivery of this one toll message can, in any way, be construed as the installation and regular use of a service, or the establishment of any "practice pertaining to the service" of a public utility.

It is to be especially noted that it is not the intention of the Commission to pass upon the question of its jurisdiction or authority to compel a physical connection between telephone exchanges, for the reason that that question is not herein presented or in any way involved.

In view of the foregoing facts, the Commission finds that no legal agreement had been entered into by and between the parties hereto. Neither had the service in question been installed and regularly used for the transmission of toll messages, so as to create or establish a "practice pertaining to the service" of the utilities herein represented. And the complaint in question should, therefore, be dismissed, and an order will issue accordingly.*

MELVERN TELEPHONE COMPANY *v.* CARBONDALE TELEPHONE COMPANY, SCRANTON TELEPHONE COMPANY, BURLINGAME INDEPENDENT TELEPHONE COMPANY, OSAGE TELEPHONE COMPANY, LYNDEN MUTUAL TELEPHONE COMPANY, OVERBROOK TELEPHONE AND GARAGE COMPANY, MICHIGAN VALLEY TELEPHONE COMPANY, QUENEMO TELEPHONE COMPANY, AND OVERBROOK COMMERCIAL WIRE COMPANY.

Docket No. 904.

Decided March 9, 1915.

Reciprocal Service Permitted — Neighboring Company Cannot be Required to Vary Rates and Practices.

Complaint alleged that the toll rates of the respondents were unjustly discriminatory, unduly preferential and in violation of the law; that none of the respondents was able to keep its toll lines in proper repair on account of the free and flat rate service rendered over them;

* Copy of order omitted.

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that this class of service congested the lines with trivial messages rendering service inefficient and insufficient. Complainant prayed that the respondents be ordered to make a telephone charge of not less than 10 cents per message between the first exchange out of Melvern and Melvern, and a charge of not less than 15 cents per message between all other points in Osage County and Melvern; that these charges be apportioned between the complainant and the respondents, and that the respondents be required to furnish adequate service.

The complainant charged its subscribers 15 cents per message for all messages to the exchanges of the respondents and retained for its own use all of the money so collected, but in consideration of the use of the lines of the respondents, complainant permitted the respondents to use its toll lines running to and through its exchange at Melvern without charge. Practically all of the respondents were satisfied with the existing conditions.

Held: That although free service is prohibited by the public utility law, reciprocal service, whereby service rendered by one company to another is compensated for by a substantially similar service rendered by the second company to the first, is permissible.

That it is not an unlawful discrimination for one company to charge a different rate and furnish a different class of service from that which is charged by a neighboring competing company, and such neighboring company has no just cause of complaint.

APPEARANCES:

H. O. Caster, attorney for Public Utilities Commission.

E. H. Hugueland, Fred Coulson, for complainant.

W. C. Youngerman, for Carbondale Telephone Company.

Henry Isaacs, for Scranton Telephone Company.

Miss Iva Heberlee, for Burlingame Independent Telephone Company.

E. C. Umdenstock, for Osage Telephone Company.

A. K. Stavely, E. C. Wilson, for Lyndon Mutual Telephone Company.

H. E. Baker, for Overbrook Telephone and Garage Company.

A. B. Crum, for Michigan Valley Telephone Company.

Elmer Christie, for Quenemo Telephone Company.

W. S. Martin, Ezra Fishburn, for Overbrook Commercial Wire Company.

OPINION.

KINKEL, *Commissioner*:

The complainant in this case alleges that the schedules of rates for toll service, which the respondents herein have filed with this Commission, and which are being charged by them, are unjustly discriminatory, unduly preferential, and in violation of the laws of this State; that none of respondents are able to keep their toll lines in proper repair and condition on account of free and flat rate service being rendered over them; that this class of service congests the lines with useless and trivial messages, rendering the service inefficient and insufficient; that because of the irregular and conflicting rates charged, it is impossible for any of the exchanges operated by companies parties hereto, to secure proper compensation for service rendered over their said toll lines; that no contracts have been entered into between respondents for the handling of said toll business and that this practice is unbusinesslike and unsatisfactory, and that it is unusual to attempt to carry on a telephone business and render efficient service in this manner. Complainant prays that respondents be required to answer the charges made, and that, after due hearing and investigation, an order be made requiring said respondents to cease from the violations of the Public Utilities Act, and to establish and put in force and apply to the transmission of telephone messages between Melvern, Kansas, and the respondents' exchanges, a rate of not less than 10 cents per message between the first exchange out of Melvern, and Melvern, and a rate of not less than 15 cents per message between all other points in Osage County and Melvern, in lieu of rates and charges now in effect; that the Commission apportion the division of said rates and charges, found to be just and reasonable, between complainant and respondents; and that respondents be required to furnish efficient and sufficient service to the public.

Answers were filed by all respondents, except the Carbondale Telephone Company. The Scranton Telephone Company and the Quenemo Telephone Company admit, in

a general way, the allegations of the complainant, except as to the condition of their lines, and join in the prayer that investigation be made and the matter complained of be corrected and adjusted by the Commission. The remaining respondents, in a general way, deny the allegations made and pray that the complaint under consideration be dismissed.

At the time of the hearing of this case, representatives of the respondents were in attendance, as shown in the caption hereof.

The testimony shows that the Melvern Telephone Company is located at Melvern, a point in the southeastern part of Osage County, Kansas; that it owns and operates fourteen miles of toll line, five miles of which extend north from Melvern, connecting with toll lines of respondents, affording it communication to and through the exchanges of said respondents; that the Melvern Telephone Company charges its patrons, without discrimination, 15 cents per message for toll messages to all of the exchanges of the respondents herein, and that it retains all revenues so collected for its own use; that in consideration of such use of the lines of the said respondents, complainant permits respondents to use its toll lines running to and through its exchange at Melvern, without charge. This condition has existed prior to, and since January 1, 1911, and is the fixed and proper procedure to be maintained by all parties, until varied or modified by this Commission. This, in fact, may practically be called a reciprocal service, instituted for the benefit and profit of the parties hereto.

Much testimony was taken on the question of service, equipment and revenue, but complaint was confined, almost exclusively, to the several witnesses of the complainant. The testimony does not show that there is any general complaint of the service in the country as a whole. Representatives of eight of the nine respondent companies testified that they were satisfied and had no complaint to make as to existing conditions.

Mr. Elmer Christie, representing the Quenemo Telephone Company, testified:

Mr. Stavely: You are well satisfied with the present system of rates, aren't you?

Mr. Christie: Yes, sir.

Mr. Stavely: Would be glad to have them continue as they are in force now?

Mr. Christie: Well, I believe we ought to have a division of tolls, to give your company a show, really Lyndon would get the better of us, but it would be fair." (Transcript, p. 107.)

Again on page 108, he said:

Mr. Crum: Now, isn't it a fact that free exchange with Lyndon, the county seat, is a great convenience for your patrons?

Mr. Christie: Yes, sir.

Mr. Crum: If this free service was cut off to Lyndon, and the other towns surrounding Quenemo, do you think you would have as many subscribers as you have got now?

Mr. Christie: I don't hardly think I would.

Mr. Crum: That is all."

Mr. E. C. Umdenstock, manager and president of the Osage Telephone Company, testified:

Mr. Crum: You are anxious to see these other telephone companies put on the same basis, that you are, aren't you?

Mr. Umdenstock: Not necessarily; I am anxious to see us all put on the same basis, whatever that is.

Mr. Crum: For what reason?

Mr. Umdenstock: Because we will not have any complaints. People complain that they are paying more than the other fellow is, and they always pick out the fellow that is paying less than they are.

Mr. Crum: Your chief complaint is your subscribers complain that you are charging them more than the other companies charge their subscribers, isn't that it?

Mr. Umdenstock: No, I don't know that we have any particular complaint among our subscribers.

Mr. Crum: What do you care what Lyndon charges her people?

Mr. Umdenstock: I don't, very much." (Transcript, p. 118.)

Mr. W. C. Youngerman, president and manager of Carbondale Telephone Company, testified:

Mr. Crum: You are satisfied with the present arrangement are you, with the rest of the exchanges in Osage County?

Mr. Youngerman: Yes, sir, I am.

Mr. Crum: You said you were satisfied, are you satisfied to run in debt each year?

Mr. Youngerman: Well, I am satisfied that I will not run in debt this coming year.

Mr. Hogueland: Measured by what standard?

Mr. Youngerman: The receipts of the business at the present time.

Mr. Hogueland: Has your business increased in the last year?

Mr. Youngerman: A little bit, last year, we had a bad year, we had a little storm that laid down about four miles of wire in a half hour's time, and a good bit of our money went in that way." (Transcript, p. 125.)

Miss Iva Heberlee, secretary and treasurer of the Burlingame Independent Telephone Company, testified:

"*Mr. Stavely:* I did not hear whether Miss Heberlee stated whether her company was satisfied with the service, as at present.

Miss Heberlee: We are, yes, sir." (Transcript, p. 130.)

Mr. H. E. Baker, manager of the Overbrook Telephone and Garage Company, gave rather extended testimony, but had no material complaint to make, as to existing rate conditions.

Mr. A. K. Stavely, of the Lyndon Mutual Telephone Company, testified:

"Now, I want to say further, in regard to the service, the Lyndon Mutual Telephone Company is interested in good service. We are making enough money, under present rates, and will do as much as any one to render service; if the other companies are willing, we are, to phantom that line and give better service." (Transcript, p. 162.)

In the testimony introduced in this case, and in the discussion arising in connection with it, considerable weight appears to be attached to the matter of *free* service. The views of this Commission are decidedly against any free service, considered in the proper sense of that term. In the *City of Leavenworth v. The Leavenworth City and Fort Leavenworth Water Company*, No. 808 of this Commission's Docket, decided January 30, 1915, in speaking of free water, theretofore furnished to the city and school district, we said:

"The system by which this free, unmeasured service is rendered by the company and accepted by the city and school authorities is, if not

unlawful, wrong in principle, contrary to good business practice, and unfair to other users of water, upon whom the burden of free service inevitably falls."

The Public Utilities Commission of Illinois, in the *Matter of the Application of The Abingdon Home Telephone Company*,* decided January 7, 1915, says:

"This Commission has already decided, in several cases presented to it, that it is not bound by the provisions of franchise ordinances, in so far as such ordinances attempt to fix rates; that the power to determine just and reasonable rates has been vested by the Public Utilities Commission Law in this Commission.

"After a careful consideration of the matter, the Commission is of the opinion that the petitioner should discontinue the furnishing of free telephone service to said city of Abingdon."

Section 10 of Chapter 238, Session Laws of Kansas, 1911, (our Public Utilities Law) declares that:

"* * * every unjust or unreasonable discrimination or unduly preferential rule or regulation, classification, rate, joint rate, toll or charge demanded, exacted or received, is prohibited and hereby declared to be unlawful and void."

Any free service is not only opposed to the general policy of all regulatory legislation, but is expressly prohibited by the law governing the operation of public utilities in this State. But it by no means follows that service of the character under consideration in this case, and which was loosely described by some of the witnesses as "free" service, is in any wise in contravention of law. We know of no good reason, legal or equitable, why a telephone service rendered and supplied by A to B cannot be compensated by a substantially similar telephone service rendered and supplied by B to A under similar conditions, and subject to the same rules, restrictions and limitations. This principle we understand to be the basis for reciprocal telephone service. This reciprocal service, if honestly undertaken and performed, should never be confounded with free service, which the law prohibits.

* See Commission Leaflet No. 39, p. 788.

A careful consideration of the testimony in this case shows, as stated, that practically all of the respondents are satisfied with existing conditions, and there is no complaint as to their rates and service, on the part of their subscribers, before the Commission. Therefore, the principal question to be considered is whether or not one telephone company can legally complain as to the rates and practices of another telephone company operating in close proximity to it. Is it a matter of unlawful discrimination for one telephone company to charge a different rate and furnish a different class of service from that which is charged and furnished by a neighboring company, or does the law contemplate that the matter of discrimination and preferential rates applies exclusively between a public utility and its patrons?

It seems very clear to the Commission that the Melvern Telephone Company has no cause for complaint as against the respondents. It has no cause for complaint, if one of the respondents charges a higher or less rate for its service, provided the same rate is charged by it for a similar service under similar, or substantially similar, conditions. If a telephone company publishes reasonable rates and furnishes efficient and sufficient service to the public in the territory in which it operates it would seem that there would be no ground for just complaint against it; and especially is this true and applicable to a competing telephone company, operating in adjacent territory.

If the Melvern Telephone Company is not earning revenue sufficient to maintain and operate its plant, or if it is operating under a rule or practice that is burdensome, it has, at all times, the privilege of making application to this Commission for permission to correct its rates and to amend its rules and practices to such an extent as to accomplish the desired and necessary results. But it is not within the province of that company to ask or require a competing company, operating in adjacent territory, to vary its rates or practices, excepting as they may apply exclusively to the use of its own property.

In view of the facts herein referred to, the Commission finds that the application of the complainant should be denied; and an order will be issued accordingly.

ORDER.

This case being at issue upon the complaint, due notice having been given to all respondents, and responses filed, and having been heard and submitted by the parties; and investigation of the matters and things involved having been had at Osage City, Kansas, on the thirtieth day of November, 1914, and the Commission having on the ninth day of March, 1915, made and filed its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof, finds; that the complaint should be denied.

It is, therefore, by the Commission ordered, That the complaint of the complainant be, and the same is, hereby denied.

Dated at Topeka, Kansas, this ninth day of March, 1915.

IN THE MATTER OF THE APPLICATION OF THE SABETHA MUTUAL
TELEPHONE COMPANY, OF SABETHA, KANSAS, FOR PERMIS-
SION TO ADVANCE RATES.

Docket No. 865.

Decided March 24, 1915.

**Increase in Rates Authorized — Valuation of Property Made — 6 Per
Cent. Allowed as Reserve for Depreciation — 7 Per Cent.**

Allowed as Rate of Return.

The petitioner sought authority to increase its rates, claiming that the revenue from the present rates was inadequate. The Commission investigated the books and records of the petitioner and found that the capital investment of the company was \$42,135; that the actual expenditure for construction of plant and equipment was \$46,466.29; and that a surplus of \$5,095.83 which the company had accumulated had been expended as a capital item for the construction and equipment of the plant. No depreciation charge had been made by the company since its organization.

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The Commission's engineer made an inspection and inventory of the property, and acting upon his report, the Commission found that \$42,135 was the fair value of the property in question.

The Commission computed the probable revenues and expenses under the proposed schedule of rates.

Held: That considering that a reserve for depreciation of 6 per cent. of the fair value of the property would be reasonable, and considering that the petitioner was entitled to a rate of return of 7 per cent. of the fair value, the net rates asked for in the amended petition were reasonable and fair.

Rules Affecting Rentals, Switching Fees and Refunds Approved.

The Commission approved the rules of the petitioner as to the collection of rentals and switching fees and the payment of refunds.

APPEARANCES:

Sample F. Newlon and Fred Coulson, counsel for applicant.

George Hook, appearing for himself and other citizens.

OPINION.

KINKEL, Commissioner:

The petitioner in this case alleges that it owns and operates a telephone exchange at Sabetha, Kansas; that its rates and rules now on file with this Commission are not sufficiently compensatory to provide for the proper operation, maintenance and depreciation of its plant and to enable it to furnish efficient service, and prays that a public hearing be held and it be granted permission to file an amended schedule of rates and rules, as follows:

Metallic Circuit

	<i>Business</i>	<i>Residence</i>
Individual line	\$2 00 per month	\$1 25 per month
Party line (4-party).....		1 00 per month
Extension sets	50 per month	50 per month
Desk sets (additional).....	25 per month	25 per month

Grounded Circuit

Farm line subscribers.....	1 00 per month
Rural telephones switched.....	50 per month

*Terms of Payment:**Monthly in advance.*

"The subscribers on each rural line switched will be required to designate one responsible person to act as their agent to deal with the company. The contract for service on said line will be billed to said agent, and failure of the said agent to pay any part of the charges due from said line will entitle the company to disconnect the line until the charges are paid.

Radius for Exchange Service: City limits."

At the time of the hearing, permission was granted to the petitioner to amend the prayer of its application to provide for an amended schedule of rates and rules as follows, to wit:

<i>Rates:</i>	<i>Gross</i>	<i>Net</i>
Business, individual line per month.....	\$2 25	\$2 00
Residence, individual line per month.....	1 50	1 25
Residence, 4-party line per month.....	1 25	1 00
Rural, farm party line per month.....	1 25	1 00
Rural farm switching per month.....		50
Extension sets per month.....		50
Desk sets, extra per month.....		25

Rules:

City line service shall be payable monthly in advance and the difference between the gross and net rates will be allowed for prompt payment. The discount on monthly bills will be allowed if payment is made at the company's office on or before the fifteenth day of the month for which bill is rendered.

Rural line service at switching rates and rural party lines shall be payable at the company's office, either monthly or quarterly in advance, as the subscriber elects, the officers of the line switched being required to contract with the company. The contract for service will be made with these officers of the lines and all charges against the subscribers on the line will be billed to such officers, and failure to pay any part of the charges due at the company's office on or before the fifteenth day of the month for which the bill is rendered, will entitle the company to disconnect the line until such charges are paid."

The schedule of rates on file with this Commission and under which the petitioner is now operating are as follows, to wit:

Business, individual line per month.....	\$1 00
Residence, individual line per month.....	1 00
Farm lines, per month.....	1 00
Switching rates, per line per month.....	1 25
Extension sets, per month.....	1 00

This company was organized in 1907, under the laws of the State of Kansas. It operates a magneto system in Sabetha, Kansas, and vicinity, its lines in said city being metallic circuits and its rural lines being grounded circuits.

The testimony in this case shows that capital stock has been issued in the sum of \$25,635; bonds have been issued by the company in the sum of \$10,000, drawing 7 per cent. interest; outstanding bills payable amount to \$6,500. The items of stocks and bonds have been disposed of at par, and the proceeds of the same, together with those of the bills payable item, show a capital investment of \$42,135, made by this company.

The accountant of this Commission has made an exhaustive investigation of the petitioner's books and records, by which it is shown that the actual capital investment claimed to be made by the petitioner, as above referred to, is correct. The accountant's report also shows that an actual expenditure for construction of plant and equipment has been made, aggregating \$46,466.29; that the operations of this company since its organization show a surplus balance of \$5,095.83, which has practically all been expended as a capital item, namely, for the construction and equipment of the plant. It is further shown that no depreciation charge has been made by the company since its organization.

In addition to this, the Commission's engineer has made an inspection and inventory of the equipment and plant in question, showing that it has been properly maintained and is now in good physical condition. This report made to the Commission, together with that of the accountant, above referred to, show conclusively that, for the purposes of this case, the capital investment of \$42,135 is a fair and reason-

able figure at which to place the present value of the property involved.

The actual expenditures by petitioner for maintenance, operation and taxes, for the year 1914, amounted to \$5,966.13. This item compares favorably with the average annual expenditures of the company in the past for this purpose.

In view of the sums expended by the company in past years for maintenance, and the report of the Commission's engineer as to the general condition of the plant and equipment, under consideration in this case, the Commission finds that a depreciation charge of 6 per cent. per annum would be fair and reasonable.

Considering all the evidence submitted, and based on reasons heretofore expressed in other similar cases, the Commission finds that the petitioner is entitled to an interest earning of 7 per cent. per annum, based on the value of the property as heretofore found.

The annual revenue of the company, based on the new proposed rates, is estimated to be as follows, to wit:

Business telephones, individual line, 92 at \$24.00 per annum..	\$2,208
Residence telephones, individual line, 323 at \$15.00 per annum.	4,845
Rural telephones, party line, 292 at \$12.00 per annum.....	3,504
Switching farm telephones, party line, 31 at \$6.00 per annum.	186
Estimated toll revenue.....	450
Estimated rental from extension sets and desk sets.....	50
<hr/>	
TOTAL ESTIMATED ANNUAL REVENUE.....	\$11,243

A recapitulation of the several items hereinbefore referred to will show an estimated operating and financial result to the company, under the new proposed rates, as follows, to wit:

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Maintenance	\$2,432 32
Operation	2,616 24
General expense	669 91
Taxes	247 66
Depreciation at 6 per cent. per annum.....	2,528 10
Interest earning at 7 per cent. per annum.....	2,949 45

TOTAL ESTIMATED ANNUAL EXPENDITURES.....\$11,443 68

TOTAL ESTIMATED ANNUAL REVENUE..... 11,243 00

ESTIMATED ANNUAL DEFICIT..... \$200 68

The revenue hereinbefore referred to may be varied somewhat, when the new proposed rates are actually applied. It will be noted that permission is asked to publish a four-party line residence telephone rate of \$1.00 per month. The Commission looks with favor upon this class of service. There is a general demand for it and it should be furnished whenever practicable.

After a careful consideration of the testimony in this case, it is self-evident that the net rates asked for in the amended application herein under consideration are, on their face, fair and reasonable, and that the application to file an amended schedule of rates providing for the installation of said rates, together with proper and reasonable rules as to collection of rentals and switching fees, should be granted.

This Commission has had under consideration, in a number of different cases, the question of rules pertaining to the collection of telephone rentals and switching fees, and therefore deems it unnecessary to, at this time, enter into any lengthy discussion in regard to that matter. Reasonable collection rules, coming within the limits of the statement of the Commission heretofore made in similar cases, may be filed by this petitioner.

It is therefore the judgment of the Commission that the application herein be granted in so far as that the Sabetha Mutual Telephone Company of Sabetha, Kansas, be permitted to file an amended schedule of rates and rules, the same to be effective from and after thirty days from the

date of filing same with the Commission, publishing rates as follows, to wit:

Business telephones, individual line, per month.....	\$2 00
Residence telephones, individual line, per month.....	1 25
Residence telephones, four-party line, per month.....	1 00
Rural telephones, party lines, per month.....	1 00
Rural switching, per telephone, per month.....	50
Extension sets, per month.....	50
Desk sets, extra, per month.....	25

Also to publish rules as to the collection of rentals and switching fees, coming within the limits of the following statement, to wit:

Terms of Payment: Monthly or quarterly, in advance, as subscribers may elect.

Switching Fees.

Switching fees may, in addition to the foregoing, be paid semi-annually or annually, as may be agreed upon.

Contracts for switching rural lines owned by subscribers, may be made with officers of such line, or some person designated for that purpose by said line company, and in case of failure of such officers or person to pay switching fees as provided for in such contract, the company may discontinue such service, after having given ten days' written notice to all subscribers on the line of its intention to so do.

In the event subscribers owning a rural line do not enter into contract as above described, switching fees on such line shall be paid by individual subscribers, semi-annually, in advance, when the rate for such service is 33 1/3 cents or more per telephone per month, and annually, in advance, when such rate is less than 33 1/3 cents per telephone per month.

Refund.

When a subscriber, not owning his own telephone equipment, desires to discontinue any service, he shall, after he has been a patron of the company one or more years, be entitled to a refund of the rental paid in advance for the full months of the unexpired time so paid for.

When a subscriber, owning his own telephone equipment, desires to discontinue any service, he shall be entitled to a refund of the switching fees paid in advance, for the full months of the unexpired time so paid for.

An order will be issued accordingly.

ORDER.

The case being at issue upon due notice, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof.

It is ordered, That the Sabetha Mutual Telephone Company of Sabetha, Kansas, be, and it is hereby, permitted to file an amended schedule of rates and rules, the same to be effective from and after thirty days from the date of filing same with this Commission and to be in lieu of rates and rules now published by it, as follows, to wit:

Business telephones, individual line, per month.....	\$2 00
Residence telephones, individual line, per month.....	1 25
Residence telephones, four-party line, per month.....	1 00
Rural telephones, party lines, per month.....	1 00
Rural switching, per telephone, per month.....	50
Extension sets, per month.....	50
Desk sets, extra, per month.....	25

Terms of Payment: Monthly or quarterly, in advance, as subscribers may elect.

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In event subscribers owning a rural line do not enter into contract as above described, switching fees on such line shall be paid by individual subscribers semi-annually, in advance, when the rate for such service is 33 1/3 cents or more per telephone per month, and annually, in advance, when such rate is less than 33 1/3 cents per telephone per month.

Refund.

When a subscriber, not owning his own telephone equipment, desires to discontinue any service, he shall, after he has been a patron of the com-

pany one or more years, be entitled to a refund of the rental paid in advance for the full months of the unexpired time so paid for.

When a subscriber, owning his own telephone equipment, desires to discontinue any service, he shall be entitled to a refund of the switching fees paid in advance, for the full months of the unexpired time so paid for.

EMPORIA TELEPHONE COMPANY *v.* KANSAS PUBLIC UTILITIES
COMMISSION.

Commission's Order Set Aside by Court.

On April 20, 1915, the District Court of Shawnee County set aside the order of the Commission, dated July 23, 1914 (See Commission Leaflet No. 33, p. 740) dismissing the application of the Emporia Telephone Company for permission to raise rates for four-party line service in Emporia.*

* The attorney for the Commission has filed notice of appeal to the Supreme Court of Kansas.

KENTUCKY.

The Railroad Commission.

THE GLASGOW HOME TELEPHONE COMPANY *v.* THE GAINESBORO TELEPHONE COMPANY *et al.*

Decided March 3, 1915.

Commission May Order Physical Connection but is Without Jurisdiction to Prohibit Receiving Exchange from Discriminating Between Originating Exchanges — Commission May Provide Conditions and Rates of Toll and Division of Interline Revenue — Circuit Court May Order Interchange of Messages upon Reasonable Terms.

Complaint was made that the Tucker exchange was discriminating against The Glasgow Home Telephone Company.

Both the Glasgow company and the Gainesboro company operated lines from Glasgow to Glasgow Junction where each company connected with the Tucker exchange. The Gainesboro company and its patrons were granted free service to points served by the Tucker exchange, but the Glasgow company and its patrons were required to pay toll to the Tucker exchange for similar service.

The defendants claimed that the Commission was without jurisdiction to enter any order removing the discrimination or directing that the Tucker exchange give the complainant the same service accorded the Gainesboro company.

Held: That the Act of 1912, giving the Commission authority to order physical connection, did not contemplate giving the Commission authority to relieve discrimination practiced by a receiving company between originating exchanges; that nevertheless the Commission was empowered to provide *inter alia*, the conditions and rates of toll to be charged and the division of tolls charged by the respective parties handling toll messages over their lines, and this jurisdiction was not lost simply because physical connection already existed;

That if the complainant could prove that the terms, conditions and rates of toll charged by the receiving exchange for handling messages over its lines were unjust and unreasonable, to that extent the Commission would have jurisdiction in the premises;

That the Circuit Court of the county in which the complainant resides has jurisdiction to compel the establishment of physical connection and

the interchange of messages upon reasonable terms and conditions and at reasonable rates;

That the complainant should be allowed to amend its petition so as to bring it within those provisions of the Act of 1912 giving the Commission authority to fix the terms and rates of toll and the division thereof.

OPINION.

The plaintiff, Glasgow Home Telephone Company, filed its petition before The Kentucky Railroad Commission alleging that it was a corporation organized under the laws of the Commonwealth of Kentucky engaged in the telephone and telegraph business, maintaining its exchange and principal place of business in the city of Glasgow, Barren County, Kentucky; that the defendant, the Gainesboro Telephone Company, is a corporation organized under the laws of the Commonwealth of Kentucky and that it maintains an exchange at Glasgow, Kentucky, and does a general telephone and telegraph business with lines running over the county of Barren and the city of Glasgow. The petition further alleges that George Tucker individually owns and operates an exchange known as the Tucker Line in Cave City, Barren County, 12 miles distant from Glasgow, and that he furnishes telephone service to numerous box rental patrons in Cave City and in Barren County.

Petition further alleges that neither the Glasgow Home Telephone Company nor the Gainesboro Telephone Company have or maintain lines in Cave City; but that each company operates a line of wire from Glasgow to Glasgow Junction, and that there each of said companies connect with the Tucker Cave City exchange, and in this way both companies secure connection with the Tucker line. The petition alleges that the Gainesboro Telephone Company and its patrons are allowed free exchange and service to points served by the Tucker exchange; but that the Glasgow Home Telephone and Telegraph Company and its patrons are required to pay toll by the Tucker line for the service which they receive.

The petition alleges that this is a discrimination and asks the Commission to enter an order requiring the Tucker line

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to remove the discrimination and give the plaintiff the same service which it accords the Gainesboro Telephone Company and its patrons. A demurrer was filed to this petition and the defendants, by said demurrer, raised the question of the jurisdiction of the Commission, as well as the authority of the Commission, to enter the order prayed for.

It is contended first that, as the Commission derives its authority from legislative enactments, that the Commission must first have legislative authority to justify jurisdiction, and next, that the petition must allege facts sufficient to come within the legislative provision contemplated by the act vesting authority in the Commission. Both contentions are correct; and it is only necessary to investigate the provisions of the Act of 1912 to ascertain whether the legislature contemplated to give the Commission authority to require physical connection between exchanges alone, or whether, in addition to this authority, the Commission had further power to prevent a discrimination between two or more exchanges where physical connection existed. The title of the act is "*An Act Providing for the Interchange and Transmission of Messages between Telephone Companies*" and the first section of the Act provides that:

"Telephone companies operating exchanges in different towns and cities shall receive and transmit each other's messages without unreasonable delay or discrimination and the telephone exchange receiving any messages from the exchange in which said message originated (shall) in the event the destination of said message be to an exchange or point beyond the lines of the exchange first receiving it, as above stated, then said exchange first receiving said message and the exchanges connected therewith, through which said message should be routed, shall switch said message through their respective exchanges by causing, without unreasonable delay or discrimination and with the same promptness with which messages originating and ending on their own lines are handled, the talking circuit to be connected up over the toll line leading through, or from said receiving exchange through other connecting exchanges to the point of destination."

The same section further provides:

"In order to give effect to Section 199 of the Constitution it is hereby intended to compel the connecting up and usage of toll wires through the

various intervening exchanges between the exchange in which the message originated and the point of destination, so that the party requesting said service shall be able to hold a conversation over the telephone circuit with the party called for at the point of destination."

As the whole purpose of the statute is stated in the last paragraph, it is necessary to investigate the provisions of Section 199 of the Constitution; for it is to give effect to this section that the law was enacted. Section 199 of the Constitution reads as follows:

"Telephone companies operating exchanges in different towns and cities, or other public stations, shall receive and transmit each other's messages without unreasonable delay or discrimination. The General Assembly shall, by general laws of uniform operation, provide reasonable regulations to give full effect to this section."

"Nothing herein shall be construed to interfere with the rights of cities or towns to arrange and control their streets and alleys, and to designate the places at which, and the manner in which, the wires of such companies shall be erected or laid within the limits of such city or town."

As will be seen from the above section the Constitution provides that telephone companies operating exchanges in different towns or cities or other public stations shall receive and transmit "each other's messages" without unreasonable delay or discrimination. Unquestionably this constitutional section contemplated that the legislature should draft laws so comprehensive as to prevent, not only a discrimination in the receiving exchange in transmitting messages; but also to prevent a discrimination in receiving and transmitting "each other's messages" so that same should be done without unreasonable delay or discrimination. It seems, however, that the only object in view, as evidenced by the legislative enactment of 1912, page 649, was to compel the receiving exchange to receive and transmit the message of the originating exchange without unreasonable delay or discrimination.

The latter part of Section 1 is not nearly so broad as the language of the Constitution, the Constitution providing that exchanges operating in different towns "shall receive and transmit each other's messages without unrea-

sonable delay or discrimination." While the explanation of the significance of the Act, as detailed, by the legislative provision, states that its object is the "connecting up and usage of toll wires through the various intervening exchanges between the exchange in which the message originated and the point of destination so that the party requesting said service shall be able to hold a conversation over the toll circuit with the party called for at the point of destination."

The very object of the provisions of this Act being thus clearly stated, the Commission, one of the bodies before whom it is provided that the provisions of this Act can be made effective, is limited in its jurisdiction by the provisions of the Act itself, which is not as comprehensive in its scope as the Constitution intended it to be.

Section 2 simply provides how Section 1 shall be made effective. It provides that plaintiff telephone company shall file its written statement before the Railroad Commission and states what the written statement shall contain. It provides for a hearing before the Commission and by implication it gives the Commission the authority to direct such connection to be made, the number of wires to be connected and the terms, conditions and rates of tolls to be charged and the division of said toll charged by the respective parties handling toll messages over the lines; and the cost of making such connection shall be borne equally by the parties.

We think it is quite conclusive that the Act of 1912 did not contemplate giving the Commission the authority to relieve discrimination between originating exchanges, practiced by a receiving exchange; but Section 2 does provide that, after a hearing, relative to the physical connection of the receiving and originating exchanges, in addition to ordering physical connection, the Commission can further provide, in its order, not only the point or points where the physical connection is to be made, but it can further provide the number of wires to be connected and the terms, conditions and rates of tolls to be charged and the division

of said toll charged by the respective parties handling toll messages over the lines; and the cost of making such connections shall be borne equally by the parties.

Now it would seem quite clear that the jurisdiction of the Commission is not lost simply because physical connection does exist, as is shown by the allegations of the plaintiff's petition in this case; and if the plaintiff in this case can allege and prove that the terms, conditions and rates of tolls charged by the receiving exchange for handling messages over its lines are unjust and unreasonable, then, to that extent the Act of 1912 has given the Railroad Commission jurisdiction in the premises. This jurisdiction, however, we think exists by necessary implication; but Section 3 gives the Circuit Court of the county in which the party making the demand resides, jurisdiction over the same subject matter, and is more comprehensive in its terms in giving jurisdiction over the subject matter to the Circuit Court than is Section 2 in giving jurisdiction to the Railroad Commission over the same subject matter.

For instance, Section 3 provides:

"If upon the demand of any person or corporation operating a telephone exchange, or toll line, the persons or corporations upon whom the demand is made for physical connection *and interchange of messages* refuse to permit said connection or refuse to grant said privilege upon *reasonable terms, conditions and toll rates*, then the person or corporation demanding said physical connection *and interchange of messages* can compel same upon reasonable terms by suit in equity filed in the Circuit Court of the County in which the party making the demand resides; and the Court shall, by mandatory injunction, compel said physical connection of the wires *and interchange of messages* with the exchange or toll lines demanded, and enforce same by contempt proceedings and in the manner other mandatory injunctions are enforced in this Commonwealth."

The section also provides "that the mandatory injunction provided in this section may be in lieu of the remedy provided in Section 2," which we have heretofore discussed.

Section 4 imposes a fine upon any company doing anything prohibited by the Act or failing to do anything required by the Act, provided no other penalty is mentioned.

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For the reasons herein stated we think that the demurrer to the plaintiff's petition should be sustained; but the plaintiff will be granted leave to amend said petition, if it desires, so as to bring the allegations of the petition under the provisions of Section 2 and the authority vested in the Commission by virtue of the provisions thereof.

Entered March 3, 1915.

MAINE.

Public Utilities Commission.

IN THE MATTER OF THE REPORTING BY UTILITIES OF NON-FATAL ACCIDENTS.

General Order.

Dated April 13, 1915.

Rules and Regulations as to the Manner and Form of Reporting Non-fatal Accidents.

GENERAL ORDER.

This Commission having under consideration the matter of the reporting by utilities of accidents non-fatal, but resulting in personal injury or damage to property, such reports being required under Section 33 of Chapter 129 of the Public Laws of the State of Maine for the year 1913; and having also under consideration Rule 16 of this Commission, has investigated to some extent the character, frequency and number of such non-fatal accidents, in order that we might be sufficiently informed to make rules and regulations as to the manner and form in which, and time at which, the utilities should be required to file their report of such accidents. Under a strict construction of the statute each such accident must be reported, no matter how trivial. If all accidents should be reported, as soon as any such happened, an unnecessary burden would be placed on the utility and such a practice would result in the Commission's devoting many hours to a useless formality.

It is, therefore, ordered, That the following rules and regulations are prescribed under Section 33 relative to non-fatal accidents, and that compliance with the same will also be regarded as compliance with Rule 16, above mentioned.

1. Whenever, in the course of operation of any locomotive engine or train on any railroad operated by steam, or of any car or cars on any street railway or railroad

operated by electricity, a collision or derailment occurs, and personal injury or damage results, such accident must be reported to this Commission in writing within three days.

2. Whenever, upon the premises of any public utility, or directly or indirectly arising from, or connected with its maintenance or operation, a non-fatal accident occurs which results in such personal injury as to render it reasonably certain that the same will cause permanent incapacity of any injured person for labor or temporary incapacity for more than two weeks, such accident must be reported in writing to this Commission within three days.

3. Whenever, upon the premises of any public utility or directly or indirectly arising from, or connected with its maintenance or operation, a non-fatal accident occurs, which results in damage to property, and such damage is of such character as to require substantial repairs of, or renewals of, the property or plant, improvements, appliances or appurtenances by the utility, such accident must be reported to this Commission within three days.

4. Whenever, upon the premises of any public utility or directly or indirectly arising from, or connected with its maintenance or operation, a non-fatal accident occurs, resulting in personal injury or damage to property, and such accident results from the violation of any rule of such utility, such accident must be reported to this Commission within three days.

5. All other non-fatal accidents must be reported in writing to this Commission on or before the tenth day of each month for the previous month.

This order shall be effective from this date.

April 13, 1915.

MISSOURI.

Public Service Commission.

J. BEN SIMS v. COLUMBIA TELEPHONE COMPANY.

Case No. 69.

**IN THE MATTER OF THE VALUATION OF THE TELEPHONE EX-
CHANGE, RURAL LINES AND LONG DISTANCE TOLL LINES
OF THE COLUMBIA TELEPHONE COMPANY.**

Case No. 282.

*Decided April 3, 1915.**

Rates and Practices of Telephone Company Investigated — Valuation of Property Made.

Complaint alleged (1) that the rates charged by the defendant were excessively high as compared with those of other towns of similar size, (2) that an additional charge was made where there were one or two roomers in private residences, (3) that an additional charge of 50 cents per month was made for extension telephones and that subscribers should be permitted to furnish and own such extension telephones without additional charge, (4) that the city of Columbia and the public schools thereof should be furnished free telephones in consideration of the use by the defendant of the streets and alleys of the city, (5) that an installation charge for telephones should be prohibited as should the charge for removing telephones where a change of tenants in the same house takes place, when in fact the telephone is not changed, and (6) that the defendant should be required to install telephones in such places in the houses of subscribers as the subscribers may desire.

The defendant denied (1) that its rates were excessive, (2) that the rates charged boarding and rooming houses were unreasonable, (3) that the charge of 50 cents per month for the use of extension sets was unreasonable, (4) that it charged any installation fee; and answered further (1) that the ownership of extension sets by subscribers would be ruinous to the service, (2) that it was prohibited by law from furnishing free telephones to the city and the public schools thereof, (3) that the requirement of advance payment was made to guard against uncollectable accounts and was credited to the subscriber at the end of a year, (4) that

* Motion for rehearing denied, April 30, 1915.

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the demand that the telephone be placed where the subscriber might desire it, namely, in such a place that the subscriber might sit in a chair to telephone, could not be granted as it was not practicable for subscribers to sit in a chair and talk into a wall telephone and as the only result of placing the telephones in this position would be to encourage "listening in."

Upon petition by fifty subscribers or prospective subscribers, the Commission proceeded to make a valuation of the defendant's plant.

Cost of Development Considered.

The defendant made no claim for going value on the theory of unrecovered early losses of the business, but contended for an amount "for advertising and soliciting subscribers" and "cost of development." The records of the company did not disclose any items of expenditures for "advertising and soliciting subscribers," nor did they show that the company had incurred any early losses in the course of building up the business.

Held: That the Commission should not assume "theoretically" that such expenditures or losses would be incurred in rebuilding a new plant since they had not been incurred in the first instance.

That the reproduction method new should only be used as a guide to the Commission and if following it to the extreme required the addition of any items of expenditure which were not actually incurred, then the method failed in its purpose.

That the Commission would not allow a separate and distinct item for cost of development, but would take into consideration the fact that the plant was in successful operation as a going concern.

Original Cost Considered.

The owners of the plant testified as to the various amounts spent in acquiring and rebuilding the system at Columbia and an audit of the company's books was made by the accountant for the Commission. The early books of the company had been lost and the more recent ones were not sufficiently accurate to show clearly the value of the plant's investment.

The Commission "seriously doubted whether the plant account, if the books had been properly kept from the beginning, would have shown a larger plant investment than about \$160,000," the amount testified to by one of the owners as being the sum actually put into the plant, not including any item for cost of development and securing needed capital.

Cost of Reproduction Determined.

Engineers for the Commission and for the defendant submitted estimates of the cost of reproducing the property of the defendant. After considering the appraisals made by the several engineers for both parties

and bearing in mind that these appraisals were merely the estimates of these engineers as to the cost of the property appraised and considering all of the other evidence introduced, the Commission found as a fact that the fair present value for determining reasonable and just rates of all of the property of the (1) local exchange, (2) rural lines, and (3) toll lines of the defendant as of December 31, 1913, used and useful by the defendant in the service of the public, considering said plant and each class of its property as a going concern and taking into account the fact that said plant and each class of its said property was in successful operation, and including engineering, supervision and interest during construction, organization and general expenses, legal expenses, contingent expenses, insurance, general contractors' profit, promotion and other development expenses, working capital, and including all other elements of value, tangible and intangible, as used in the public service in furnishing telephone service, was as follows:

(1) City exchange, \$105,000, (2) rural lines, \$42,000, (3) toll lines, \$35,000, making a total of \$182,000.

Special Rate for Boarding and Rooming Houses Condemned.

The defendant classified all private residences where more than one boarder or roomer was kept as a boarding or rooming house and applied a rate of \$6.00 per annum higher to such residences than to those residences where one or no boarder was kept. No such classification was made in any other city or town in Missouri. The defendant justified the classification not on the ground that the boarder or roomer used the telephone but on the ground that houses having a number of boarders or roomers made considerable more use of the telephone than did ordinary private houses having not more than one boarder or roomer.

The boarding-house rate was charged for the whole year even though the boarders or roomers should leave prior to that time.

Held: That the practice of charging the boarding-house rate for the full year, regardless of whether there were boarders in the house or not, was an unreasonable discrimination.

That a classification making a special rate for boarding or rooming houses caused much dissatisfaction and would practically require the policing of such houses if a separate rate were to be applied from month to month without discrimination.

That the classification of private residences having two or more boarders or roomers as board or rooming houses was unjust and unreasonable and should be abrogated as a separate classification.

Requirement of Cash Deposit as Condition Precedent to Service Condemned.

The defendant had a rule requiring that a deposit of \$3.00 be made with each order for service in the city exchange, this deposit to be credited on

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account of service in the concluding weeks of a full year. While the subscriber received credit for this deposit on the last months of the full year following his installation, nevertheless should he discontinue the use of his telephone before the end of the year, his deposit then became a forfeit.

The defendant contended that the \$3.00 deposit was justified because of the outlay on the part of the company when the subscriber demands service, and that the forfeit of the \$3.00 where service was terminated within the year was justified to cover the unprofitableness of short term contracts.

Held: That this requirement of a deposit should be discontinued and the company should charge three months in advance for every telephone when installed and monthly in advance thereafter.

Charge for Changing Telephone Considered.

Held: That where there is a telephone in a house moved to, which is connected up, and suitable service can be rendered over such telephone, the charge of 50 cents formerly imposed by the company for changing telephone should be discontinued.

Rate of Return Fixed.

Held: That the rate of return considering the hazard of the telephone business as a whole and further taking into consideration the fact that the rural and toll lines are considered as part of the plant in this case, should be $7\frac{1}{2}$ per cent.

Reserve for Depreciation Fixed.

Held: That the annual reserve for depreciation and contingencies for a plant of the size and character of that at Columbia should be $6\frac{1}{2}$ per cent.

Reduction in Rates Refused.

Considering the operating revenues and expenses, reserve for depreciation at $6\frac{1}{2}$ per cent. and rate of return at $7\frac{1}{2}$ per cent., the net balance for the year would be \$2,053.80. The discontinuance of the classification of boarding and rooming house rates would cause a reduction of approximately \$966. The discontinuance of the cash deposit and forfeiture rule would cause a reduction of approximately \$1,000.

Held: That although the scale of rates charged by the defendant appears to be rather high for a city of the size of Columbia and only to be justified by reason of the well and expensively built plant of the defendant, the Commission did not feel justified in saying that the rates were unreasonably high *per se* in considering the population of Columbia and that the state university was located there, and considering the high class of service which is being furnished.

Rates for Extension Sets Considered.

Held: That without an investigation, the Commission was unable intelligently to prescribe a rate for extension sets different from that established by custom and therefore dismissed the complaint without prejudice.

Ownership of Extension Sets Condemned.

Held: That in order to insure good and efficient service the telephone company should own all parts of its instruments and be held responsible for their proper up-keep and service condition.

Free Service to Municipality in Absence of Franchise Requirement Unlawful.

The franchise of the Columbia Telephone Company contained no provision that free service should be furnished the city or the public schools thereof.

Held: That the Commission has no power to amend a franchise and to require that free service be furnished a municipality. Under the circumstances in this case it would be a discrimination to require the defendant to furnish free service as asked for by the complainants.

Location of Telephones to be Determined by the Utility.

The Commission refused to issue any general order regulating the location of telephones for the reason that the circumstances in each individual case might have a very material bearing as to the proper location of the telephone in the residence.

APPEARANCES:

N. T. Gentry and *J. C. Gillespie*, for complainant.

W. M. Williams and *McBaine and Clerk*, for defendant.

OPINION.**I.****THE ISSUES MADE.**

The complaint in Case No. 69 was filed by J. Ben Sims and is supported by supplemental petition as a part thereof, which supplemental petition was signed by some thirty subscribers and prospective subscribers of defendant company living in Columbia, and charges the following facts: (1) That the rates charged by defendant company are excessively high as compared with other university towns, and also towns of like population in this State; (2) that an

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additional charge is made where there are one or more roomers in private residences; (3) that an additional charge of 50 cents per month is made for extension 'phones, and that subscribers should be permitted to furnish and own such extension 'phones and that no additional charge should be made for such 'phones thus owned; (4) that the city of Columbia and the public schools thereof should be furnished free telephones for the use by defendant company of the streets and alleys of said city; (5) that an installation charge for 'phones be prohibited and a charge for removing 'phones where a change of tenants in the same house takes place when in fact the 'phone is not changed, be prohibited; and (6) that defendant company be required to place telephones in the houses of subscribers where subscribers desire such 'phones placed.

Defendant's answer contains the following denials: (1) That its rates are excessive and states that the rates charged by it are not sufficient to yield a fair return on the investment necessary to conduct its business; (2) that the rates charged boarding and rooming houses are not excessive and that the cost of service to boarding and rooming houses is greater than the cost to private residences; (3) that the charge of 50 cents additional per month for the use and service of extensions is a reasonable and fair charge, and that to allow subscribers to own and furnish such extensions would be ruinous to the service, and further that extension sets do increase the use of the telephone and the cost of giving service, and that the increased charge is justified; (4) that defendant is prohibited by law from furnishing free telephones to said city and the public schools thereof; (5) that no installation fee is charged as alleged, but that an advance payment of \$3.00 is made to guard against loss from failure to collect accounts, which are rendered at the end of each month after service is had, or quarterly during the second month of the quarter for which service is had, and when received the subscriber is given credit on his account for the end of the year, so that if the subscriber keeps his 'phone for the full year, as con-

tracted, he receives credit for the full amount of said \$3.00 on his account for services, and that the rates are based on the year's service, and the advance payment of said \$3.00 is required not only to guard against loss from failure to collect accounts as stated, but further to guard against persons having telephones installed, and then after a month or so having them taken out, and that defendant has not charged an installation fee for almost one year; and (6) that the demand of complainants that the telephone be put near the floor cannot be complied with by defendant, because defendant owns and conducts a great many rural line telephones which are party line telephones and also a great many party line telephones in the city of Columbia, and that to place telephones on these party lines so close to the floor that people may sit in chairs and listen over them would result in a great many people using them to eavesdrop or "rubber," and that such a custom would not only be unfair to the subscribers, but would encourage such eavesdropping over the telephone, which is injurious to the service, especially on the rural telephones, and would result in destroying the batteries and injuring the service given to other subscribers. Furthermore, that it is not practicable to sit in a chair and talk into a wall telephone properly without leaning over in a most uncomfortable attitude, while eavesdropping is easy, inasmuch as one can hold the receiver to the ear while the mouth is entirely too far from the transmitter for properly talking.

At the first hearing on the complaint and answer thus made, much evidence was introduced in support of each. Defendant company also introduced the inventory and appraisal of the plant by engineers Sloan and Allison, and an audit of its income and operating expenses by accountant Haddath. Following this hearing a petition containing about fifty signatures of subscribers and prospective subscribers of defendant company living in Columbia and adjoining vicinity, was filed with the Commission asking that the Commission make an audit and appraisal and valuation

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of defendant's plant. Whereupon the Commission issued its order in Case No. 282 as prayed by said petitioners. Much evidence was thereafter introduced by complainants, by the Commission's accountant and engineer, and by additional engineers and other witnesses by defendant. The above entitled cases were consolidated, and also heard with Case No. 195* filed by complainant Hickman, and which has heretofore been decided by the Commission. We shall consider the several questions involved in the complaint after disposing of the question of the valuation.

II.

" COST OF DEVELOPMENT. "

Defendant company makes no claim in this case for a separate item for what is commonly called " going value," on the theory of unrecouped early losses of the business, but contends for an item which it designates "for advertising and soliciting subscribers" and "cost of development."

Engineer Sloan estimated this item at \$25,224. He stated that it was purely a " theoretical " item of cost, and further states in his report filed with the Commission, that

" In view of the fact that the appraisal is made on the basis of the cost of reproduction, it seems that some consideration should be given to the cost of developing the business under present conditions rather than under the conditions which existed at the time the business was built."

This witness, when testifying, said:

" Now, of course after the plant is in operation, I do not wish to be understood as claiming that the soliciting is a capital charge, but up to the time the business is developed, that is one item of expense, securing your subscribers."

Engineer Allison added to his appraisal an additional item of \$62,000 for " intangible property," which we understand also includes, among other items, the item of " cost of development."

* See Commission Leaflet No. 39, p. 844.

Engineers Hale, Robinson, Kositsky and Noble added to their joint appraisal an additional item of \$44,518 for "cost of establishing business," and stated that this figure was arrived at by taking 20 per cent. of the replacement cost of the estimated value of the plant new, without depreciation. Mr. Hale, when testifying, stated that he did not know any accurate method of determining the cost of establishing a business of this nature, but only used estimates in arriving at such figures.

Accountants for defendant company and for the Commission both testified that the records of defendant company did not disclose any items of expenditures for "advertising and soliciting subscribers," as contended for by defendant company. In fact, the proof is clear in this case that defendant company did not incur any such expenditures, as shown from a historical study of its plant and examination of its records and accounts. Why should we then assume "theoretically" that any such expenditures would be incurred in rebuilding a new plant, if not in the first instance? Whatever such expenditures might amount to if incurred would be paid as operating expense, and should not be charged to capital account under the Uniform System of Accounts.

Furthermore, the testimony in this case does not disclose any early losses on the money invested by defendant company. Indeed, engineer Sloan assumed that the rates had been reasonable from the very beginning of the company in making his estimate of "cost of development." Counsel for defendant strongly relies upon the case of *People ex rel. Kings County Lighting Company v. Willcox*, 210 N. Y. 479. Mr. Justice Miller, in that case, speaking for the Court (l. c. 489) said:

"The Commission in this case had to determine the rate to be charged, not by a new company with no business, but by an old company with an established business. The first question, therefore, to determine on this branch of the case was whether the company had already received a fair return on its investment. If it had received such return from the start, or if in later years it had received more than a fair return, the public would already have borne the expense of establishing the business in

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whole or in part, and to that extent the question of 'going value' for the purpose of fixing a present rate would be eliminated; for it must constantly be kept in mind in dealing with this problem that the company is entitled to a fair return and no more. If it has already had it, that is the end of the matter. If it did not receive a fair return in the early years owing to the establishment of the business, a subsequent rate must allow for that loss or it will be confiscatory."

The "reproduction method new" should only be used as a "yardstick" or measure in trying to ascertain the "fair present value" of the plant of defendant used and useful and now being appraised by the Commission. If the "reproduction method new," followed to the extreme, requires the adding of any items of expenditures which are, in fact, not actually incurred in the ordinary manner, then the method fails in its purpose and is subject to criticism and abuse.

In *McGregor-Noe v. Springfield Gas and Electric Company*,* 1 Mo. P. S. C. 468, this Commission discussed at some length the question of going value, and cited many authorities thereunder. As we stated in that case, we will not attempt to allow a separate and distinct item for "cost of development," as contended for by defendant company, but will take into account the fact that the plant was in successful operation as a "going concern," as stated by the Supreme Court of the United States in the *Cedar Rapids Gas Company Case*† cited in that opinion, in fixing the fair present value of the plant for rate making purposes in this case.

III.

ORIGINAL COST.

In February, 1898, J. A. Hudson and Theodore Gary purchased the Columbia Telephone plant for \$3,875, from one Truitt. Just prior thereto they had purchased a new franchise granted to one Nab authorizing the construction of

* Syllabus in Commission Leaflet No. 33, p. 932.

† *Cedar Rapids Gas Light Company v. City of Cedar Rapids*, 223 U. S. 655.

the second exchange in Columbia and also the small subscription list which said Nab had secured thereto, for \$400. Mr. Hudson located at Columbia and became the active manager and the owner of the larger interests in the Columbia plant. Mr. Gary continued to live at Macon and looked more after the financial affairs of the company at Columbia and plants located elsewhere and left to Mr. Hudson the actual supervision of the rebuilding of the physical properties of the Columbia plant.

Between the date of purchase, February, 1898, and July of that year Mr. Hudson rebuilt the Columbia plant practically new and had about 300 subscribers at that time. Mr. Hudson estimated his entire investment after the plant had been rebuilt at about \$30,000 to \$35,000.

In December, 1898, Messrs. Hudson and Gary incorporated defendant company under the laws of this State with \$5,000 capital stock all issued and paid in full.

All records, books and accounts of defendant company prior to January 1, 1909, have either been lost, misplaced, destroyed or burned and could not be found at the time of hearing and the examinations by the Commission's accountants as well as the accountant for the company. The explanation of the destruction or loss of the books is not very definite or certain.

Mr. Gary, who had been very familiar with the financial affairs of the company from the date of its purchase in 1898, testified that about \$160,000, exclusive of "cost of attaching the business" and "financing," had been invested in the entire plant. It is well to state here that the plant includes the exchange in the city of Columbia, the rural lines and the toll lines. Mr. Gary further testified that considering the "cost of attaching the business" and "financing" that he thought in the neighborhood of \$200,000 had been invested in the entire telephone plant at Columbia. Mr. Hudson testified that he could not tell the exact investment in the plant, but thought it would run even more than Mr. Gary testified, but stated that witness Gary was in the better position to know as to the actual

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financial expenditures than he was, inasmuch as Mr. Gary looked after the financing of the company while he was looking after the physical properties.

In 1906 the company was desirous of issuing bonds to secure some \$60,000 of additional money with which to rebuild the plant and make needed additions and extensions thereto; also the building of additional rural and toll lines. C. H. Ledlie, an engineer of St. Louis, representing prospective bond purchasers, appraised the entire plant of defendant company in the month of February, 1907, as of date December 31, 1906, at \$129,600. This appraisal consisted of 900 city lines at \$100 per line, making \$90,000, 192 miles of farm lines at \$125 per mile, making \$24,000, and 52 miles of toll lines at \$300 per mile, making \$15,600, making the grand total sum of \$129,600. Mr. Hudson testified that he estimated the entire cost of the plant "including going value," as of January 1, 1909, at \$175,000. It is well to state that from this date defendant company opened its books taking \$175,000 as its capital investment as of that date, and that the records which have been reasonably well kept by it since, were examined by the accountants for the Commission and the company.

In the summer of 1909 defendant company issued bonds to the amount of \$60,000, and the proceeds from the sale thereof, amounting to \$48,000, were used to rebuild the plant and make the extensions for which Mr. Ledlie had made the estimated valuation in the early part of 1907, as heretofore explained.

In June, 1905, the capital stock was increased to \$250,000, made up of 2,250 shares of common stock of the par value of \$100, and 250 shares of preferred stock of the par value of \$100.

In June, 1906, a stock dividend was declared and 1,000 shares of common stock and 250 shares of preferred stock, amounting in the aggregate to the sum of \$125,000, were issued. In this issue there was an exchange made for the original 50 shares of stock first issued in 1898, thereby making the amount of stock dividend issued at this time only \$120,000.

On April 1, 1913, a few days before the effective date of the Public Service Commission Law, a further stock dividend by defendant was declared and \$66,500 of common stock was issued to stockholders, as well as 85 shares to Mr. Hudson, amounting to \$8,500, in exchange for 17 of its first mortgage bonds of \$500 each, thus making a total issue of stock by defendant company of \$200,000. Mr. Hudson testified that in addition to the proceeds of \$48,000 derived from the sale of the \$60,000 of bonds issued in 1909, and earnings from the company, he had invested in the plant some additional money derived from an insurance policy and from the sale of certain real estate, making the aggregate sum of money thus invested in the plant by him about \$15,000.

The 17 bonds are still in the hands of the company and held in its reserve fund.

The report filed by witness McShane, accountant for the Commission, gives as the total plant investment of defendant company as shown by its books, as of December 31, 1913, to be \$254,753.84. As heretofore explained, the records begin with the unverified item of \$175,000 as the plant account as of January 1, 1909. Mr. McShane's report shows only one item of \$12,150 as having been charged off for switchboard and 900 telephones replaced. We understand that the item of \$254,753.84, representing the book investment, does not include any charges, other than the one item above mentioned, for depreciation and replacements of the several old plants which were used up or cast aside as obsolete at the rebuilding of the plant practically new in 1898 and 1909. This item of book investment would be considerably reduced were these several items to be charged off as hereinafter shown.

The report submitted by the company's accountant, Mr. Haddath, shows the original plant investment to be \$262,301.99. But Mr. Haddath states in his report that he took the "physical assets" \$224,257, and the "cost of development" \$25,224, making the total sum of \$249,481, being the figures shown by the appraisal of engineer Sloan as being

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more accurate than the figures shown by the records. The records do not show what part of the original plant investment was made in the local exchange, the rural lines and the toll lines, as accounts were not kept separate for each.

A comparative balance sheet of the reports as submitted by accountant McShane for the Commission and accountant Haddath for the company shows more plainly the items of difference, as follows:

TABLE No. 1

<i>Assets</i>	<i>McShane's Report</i>	<i>Haddath's Report</i>	<i>Haddath under</i>
Exchange Plant and Pole Lines	\$254,753 84	\$249,481 00	\$5,272 84
Accounts receivable — sub- scribers	4,748 68	4,510 47	238 21
Cash	216 01	238 98*	454 99
Advances to J. A. Hudson on account of Anticipated Divi- dends	23,500 00	.....	23,500 00
Reserve Fund	17,000 00	17,000 00	.....
Unextinguished Bond Discount and Expense	4,162 50	.....	4,162 50
	<hr/>	<hr/>	<hr/>
	\$304,381 03	\$270,752 49	\$33,628 54
<i>Liabilities</i>			
Capital Stock	\$200,000 00	\$200,000 00	.....
First Mortgage 6% Gold Bonds	48,000 00	48,000 00	.....
Notes Payable	4,000 00	4,000 00	.....
Accounts Payable	4,110 68	3,252 13	\$858 55
Reserve for Subscribers' De- posits	788 50	788 50	.....
Surplus	47,481 85	14,711 86	32,769 99
	<hr/>	<hr/>	<hr/>
	\$304,381 03	\$270,752 49	\$33,628 54

While the audit of defendant's books available gives valuable information, yet we do not feel that the books have been kept sufficiently accurate to clearly show the plant investment and the loss of the early books, from the date of the purchase in 1898 to January 1, 1909, the date at

* DEFICIT.

which the books show the item of \$175,000 based on the Ledlie appraisal of 1907, with additions for the years 1907 and 1908 added thereto, plus "going value," are entirely missing.

The evidence discloses that Mr. Hudson had drawn from the company \$23,500, which was carried on its books as bills receivable. Mr. Hudson explains that this was in payment to him for the money that he had advanced the company, derived from the insurance policy and sale of land as heretofore stated.

Beginning with the unverified item of plant account of \$175,000 at January 1, 1909, and by making the additions thereto since said date as shown by the plant account, and by figuring off a depreciation of 6½ per cent., we have the following result:

<i>Year</i>	<i>Capital investment</i>	<i>Less De- preciation at 6 1-2 per cent</i>	<i>Investment less depreciation</i>
January 1, 1909.....	\$175,000 00	.....	.....
December 31, 1909.....	221,688 62	\$11,375 00	\$210,313 62
December 31, 1910.....	236,030 01	25,784 76	210,245 25
December 31, 1911.....	242,847 74	41,126 71	201,721 03
December 31, 1912.....	247,474 20	66,911 81	180,562 39
December 31, 1913.....	254,753 84	72,997 63	181,756 21

We do not accept the plant account of \$175,000 as of January 1, 1909, as being a true and correct account of the plant investment at that date. The proof shows that less than \$4,000 was paid for the old plant when purchased in February, 1898, and that between that date and July of that year the plant was rebuilt new at a cost of between \$30,000 and \$35,000. The proof shows that the plant in 1906 needed rebuilding, and was rebuilt, in the year 1909.

In 1906 Mr. Ledlie made what might be called a rough estimated appraisal of the plant at \$129,600. The plant, between 1907 and 1909, while being worn out and depreciating, increased, according to the book entry on January 1, 1909, from \$129,600 to \$175,000. It is stated that this item included "going value" but what amount was added for going value the Commission has been unable to ascertain.

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We seriously doubt whether the plant account, if the books had been properly kept from the beginning, would have shown a larger plant investment than about \$160,000, which was testified to by witness Gary as being the amount of money actually put in the plant, not including any item for "cost of development" and securing needed capital. A study of the entire history of the plant shows that the exchange plant was practically rebuilt in 1909, and that the money was derived from a sale of \$60,000 of bonds which realized the company \$48,000 and a small amount of additional money which was added by Mr. Hudson, making the total expenditures at that time \$67,000.

With the exception of the money derived from the sale of bonds and the original purchase price of the plant, and a small amount of money added to the plant derived from the insurance policy and the sale of lands as testified to by Mr. Hudson, the plant has been practically built from its earnings.

IV.

ESTIMATES OF COST OF REPRODUCTION NEW.

Estimates of cost of reproduction new, and estimates of cost of reproduction new less depreciation, were presented by a number of engineers for the company, and also by Mr. Player, the Commission's engineer. The detailed inventory was made by engineer Sloan, of the firm of Sloan, Huddle, Feustel and Freeman, for defendant company. The other engineers for the company used this detailed appraisal. Engineer Player also used the detailed inventory made by engineer Sloan, but spent a number of days checking and verifying same as to quantities and conditions, and applied his own unit prices and overhead charges.

The several appraisals presented by the Commission's engineer and the company's engineers are made as of December 31, 1913, and are shown in the following tables:

TABLE NO. 2
TOTAL SUMMARY OF ENGINEER PLAYER'S APPRAISAL FOR THE COMMISSION

	Exchange			Rural			Total			Toll			Grand total		
	C. N.	C. L.	D.	C. N.	C. L.	D.	C. N.	C. L.	D.	C. N.	C. L.	D.	C. N.	C. L.	D.
1. Real estate.....															
2. Central office equipment....	\$18,459	\$17,536		\$1,845	\$1,753		\$20,304	\$19,289		\$2,000	\$1,900		\$22,304	\$21,189	
3. Distribution system.....	43,983	38,485		33,842	29,612		77,825	68,097		28,841	25,236		106,666	93,333	
4. Subscribers' station equip- ment.....	20,693	19,658		3,569	3,390		24,262	23,048		10	9		24,272	23,057	
TOTAL.....	\$83,135	\$75,679		\$39,256	\$34,755		\$122,391	\$110,434		\$30,851	\$27,145		\$153,242	\$137,579	
5. Add 15 per cent*	12,470	11,352		5,888	5,213		18,358	16,565		4,628	4,072		22,986	20,637	
TOTAL.....	\$95,605	\$87,031		\$45,144	\$39,968		\$140,749	\$126,999		\$35,479	\$31,217		\$176,228	\$158,216	
6. Furniture and fixtures.....	2,976	2,690		30	27		3,006	2,707		30	27		3,036	2,734	
7. Tools and teams.....	3,050	2,287		31	23		3,081	2,310		31	23		3,112	2,333	
8. Stores and supplies.....	6,350	6,350		420	420		6,770	6,770					6,770	6,770	
9. Paving included in distribu- tion system.....															
TOTAL.....	\$107,981	\$98,348		\$45,625	\$40,438		\$153,606	\$138,786		\$35,540	\$31,267		\$189,146	\$170,053	

C. N. = Cost new.

C. L. D. = Cost less depreciation.

NOTE: In addition to the property herein enumerated the company has on hand nearly all of the old magneto interior equipment which was replaced by the present equipment. This old equipment would cost new about \$13,000. It is of obsolete type and is of little or no value — no part of this property is included herein.

* For overhead charges.

TABLE No. 3
TOTAL SUMMARY OF ENGINEER SLOAN'S APPRAISAL FOR THE COMPANY

	Exchange			Rural			Total			Toll and miscellaneous property			Grand total		
	C. N.	C. L. D.		C. N.	C. L. D.		C. N.	C. L. D.		C. N.	C. L. D.		C. N.	C. L. D.	
1. Real estate.....															
2. Central office equipment.....	\$21,724	\$20,317		\$125	\$119		\$21,849	\$20,436		\$450	\$430		\$22,299	\$20,866	
3. Distribution system.....	45,590	41,040		35,853	26,602		81,443	67,642		33,485	26,514		114,928	94,156	
4. Subscribers' station equipment.....	29,572	26,490		5,845	5,343		35,417	31,833		18	17		35,435	31,850	
5. Furniture and fixtures.....	2,976	2,694		30	28		3,006	2,722		30	28		3,036	2,750	
6. Tools and teams.....	3,050	1,756		31	18		3,081	1,774		31	18		3,112	1,792	
TOTAL.....	\$102,912	\$92,297		\$41,884	\$32,110		\$144,796	\$124,407		\$34,014	\$27,007		\$178,810	\$151,414	
7. Add 15 per cent*.....	15,437	13,845		6,283	4,817		21,720	18,662		5,102	4,051		26,822	22,713	
TOTAL.....	\$118,349	\$106,142		\$48,167	\$36,927		\$166,516	\$143,069		\$39,116	\$31,058		\$205,632	\$174,127	
8. Stores and supplies.....	6,350	4,187		420	277		6,770	4,464					6,770	4,464	
TOTAL.....	\$124,699	\$110,329		\$48,587	\$37,204		\$173,286	\$147,533		\$39,116	\$31,058		\$212,402	\$178,591	
9. Paving.....	1,289	1,237					1,289	1,237		88	84		1,377	1,321	
TOTAL.....	\$125,988	\$111,566		\$48,587	\$37,204		\$174,575	\$148,770		\$39,204	\$31,142		\$213,779	\$179,912	

C. N. = Cost new.

C. L. D. = Cost less depreciation.

NOTE: In addition to stores and supplies included here, the company has on hand a large number of superseded magneto telephones and superseded magneto switchboards which were taken out of service when the present plant was remodeled. The cost of this equipment new would be \$10,478. This property is in excellent condition, and was superseded by the present equipment in order to supply the Columbia subscribers with the latest development of central energy service.

* For overhead charges.

TABLE No. 4

TOTAL SUMMARY OF APPRAISAL OF ENGINEER ALLISON FOR THE COMPANY

	<i>Exchange C. N.</i>	<i>Rural C. N.</i>	<i>Total C. N.</i>	<i>Toll C. N.</i>	<i>Grand total C. N.</i>
1. Real estate.....					
2. Central office equipment..	\$18,459	\$1,845	\$20,304	\$2,000	\$22,304
3. Distribution system.....	43,284	44,869	88,153	37,644	125,797
4. Subscriber's station equip- ment.....	40,722	6,461	47,183	269	47,452
5. TOTAL.....	\$102,465	\$53,175	\$155,640	\$39,913	\$195,553
6. Add 5 per cent. engineering.	5,123	2,659	7,782	1,996	9,778
7. TOTAL.....	\$107,588	\$55,834	\$163,422	\$41,909	\$205,331
8. Furniture and fixtures.....					
9. Tools and teams.....					7,070
10. Stores and supplies.....					
11. TOTAL PLANT.....	\$107,588	\$55,834	\$163,422	\$41,909	\$212,401
12. Insurance, taxes and in- terest.....	5,003	2,528	7,531	2,036	9,568
13. Cash } Working.....	6,057		6,057		6,057
Supplies } Capital.....	5,472		5,472	286	5,758
14. TOTAL.....	\$124,120	\$58,362	\$182,482	\$44,231	\$233,784

C. N.= Cost new.

NOTE.— This report was submitted showing no depreciated value.

TABLE No. 5

TOTAL SUMMARY OF ENGINEERS HALE, ROBINSON, KOSITZKY AND NOBLE FOR THE COMPANY

	<i>Exchange C. N.</i>	<i>Rural C. N.</i>	<i>Total C. N.</i>	<i>Toll C. N.</i>	<i>Grand total C. N.</i>
1. Real estate.....					
2. Central office equipment..	\$22,122		\$22,122		\$22,122
3. Distribution system.....	63,806	\$35,251	99,057	\$45,547	144,604
4. Subscriber's station equip- ment.....	20,146	5,552	25,698	16	25,714
5. TOTAL.....	\$106,074	\$40,803	\$146,877	\$45,563	\$192,440
6. Secondary costs.....	16,125	6,518	22,643	7,505	30,148
7. TOTAL.....	\$122,199	\$47,321	\$169,520	\$53,068	\$222,588
8. Furniture and fixtures.....	2,976	30	3,006	30	3,036
9. Tools and teams.....	3,050	31	3,081	31	3,112
10. Stores and supplies.....	6,350	420	6,770		6,770
11. TOTAL.....	\$134,576	\$47,802	\$182,377	\$53,129	\$235,506
12. Working capital.....					7,700
13. Cost of establishing busi- ness.....					44,518
14. GRAND TOTAL.....					\$287,724

C. N.= Cost new.

NOTE.— This report was submitted showing no depreciated value.

TABLE No. 6

TOTAL SUMMARY OF ENGINEERS FOWLER AND POLK'S APPRAISAL FOR THE COMPANY

	<i>Exchange C. N.</i>	<i>Rural C. N.</i>	<i>Total C. N.</i>	<i>Toll C. N.</i>	<i>Grand total C. N.</i>
1. Real estate.....	None	.....	.....	.....	.....
2. Central office equipment..	\$21,724	\$125	\$21,849	\$450	\$22,299
3. Distribution system.....	48,308	38,134	86,442	33,675	120,115
4. Subscribers' station equip- ment.....	29,459	5,949	35,408	18	35,426
5. Furniture and fixtures....	2,976	30	3,006	30	3,036
6. Tools and teams.....	3,050	31	3,081	31	3,112
7. TOTAL.....	\$105,517	\$44,269	\$149,786	\$34,202	\$183,988
8. *Add 15 per cent.....	15,827	6,640	22,467	5,130	27,597
9. TOTAL.....	\$121,344	\$50,909	\$172,253	\$39,332	\$211,585
10. Stores and supplies.....	6,350	420	6,770	.....	6,770
11. GRAND TOTAL.....	\$127,694	\$51,329	\$179,023	\$39,332	\$218,355
12. Add working capital.....	.....	.....	.....	.....	4,000
					<u>\$222,355</u>

C. N.—Cost new.

NOTE.—This valuation was submitted showing no depreciated value.

* 15 per cent. added for engineering, liability, insurance and interest during construction.

It is to be noted that the appraisals of Player for the Commission and Sloan for defendant company are the only ones that give estimates of the cost to reproduce the plant new, less depreciation.

This Commission held in the *McGregor-Noe Case*,* *supra*, that under the decisions of the United States Supreme Court, as well as those of other federal and state courts, the fair present value of the property means the depreciated value of the property. We need not here stop to enter upon a discussion as to the correctness of this theory of figuring the rate of return upon the value of the property, less depreciation. The curious may find many articles written by economists and engineers both for and against this theory of depreciation of the value of a public utility in rate cases.

Mr. Player estimated the depreciated value of exchange, rural and toll lines at \$170,053, while Sloan's is \$179,912. The appraisals of the other engineers show no depreciated

* See Syllabus in Commission Leaflet No. 33, p. 932.

value, and for that reason we are unable to make a comparison of same. The units of cost of the other engineers appear to be rather high, as we are of the opinion that they have applied cost units used largely in cities like St. Louis and Kansas City.

It is earnestly contended by defendant that Mr. Player's appraisal should be increased \$2,911 on cable, \$10,475 on inside installations of subscribers' stations, and \$6,913 on two grades of poles, making a total increase in his appraisal of \$20,299. This also includes the toll lines, but does not include any item for "cost of development" or other "intangible" property.

At the hearing, we were of the opinion that Mr. Player was rather low on some of those items about which complaint is made. However, he testified that he applied the same units of cost to the Clayton exchange, with which a comparison was made on cross-examination, that he did in the exchange in the city of St. Louis, and that the labor conditions are the same at Clayton as in the city of St. Louis, while he thought labor conditions at Columbia were more favorable than at either St. Louis or Clayton. He further stated that at both St. Louis and Clayton, the union scale of labor as to hours and prices was applied, while not at Columbia. He stated that he allowed the same units for labor cost of placing cable at Columbia that he did at Clayton and St. Louis, as that kind of skilled labor could not be had at Columbia.

He further testified that the cost of subscribers' stations installed at Columbia was much less than at Clayton or St. Louis, on account of these labor conditions and prices paid for same. Player and Sloan differ as to the cost of certain grades of poles. Sloan classed the poles as 25' x 23" x 38" known as better than Class A, while Player classified the poles as Class B. Sloan used \$6.27, while Player used \$3.92, a difference of \$2.35 in this class of poles. Much of the difference herein is found in the poles themselves. Sloan values the pole f. o. b. Columbia at \$4.33, while Player values the pole at \$2.30, or two cents

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higher than the same pole, under his classification, is valued at St. Louis or Clayton. The actual difference in the cost of the pole is \$2.03. There is also a difference between these engineers in the labor cost applied to this pole. Sloan used \$1.94 while Player used \$1.23, or a difference of \$.71; adding the difference in the cost of the poles, \$2.03, and the difference in the labor cost, \$.71, gives a total difference of \$2.74, less \$.39 allowed by Player for "butt treatment" of the pole and a small additional sum for profit on the pole and labor, making a total difference of \$2.35. The proof shows that the plant owned by defendant company is one of the best built plants in the State in a city the size of Columbia.

In Sloan's appraisal is an item for "furniture and fixtures," \$2,750, "tools and teams," \$1,792, to which amount he adds 15 per cent. for engineering, etc., or the sum of \$681; 266 miles of right of way \$1,333; warehouse expenses \$3,939, making a total of \$5,946, which was disallowed by Player as improper items included in the appraisal submitted by Mr. Sloan.

The proof shows no warehouse expenses were actually incurred by defendant company in the building of its present plant, and that no charge was made by the county for the use of the right of ways of its public roads. We think none should be allowed here for either of said items. We do not think any item for engineering, etc., should be charged against the items of furniture and fixtures, tools and teams.

Mr. Sloan allowed \$3,500 for working capital, which we think is not an unreasonable amount for that purpose.

An automobile belonging to defendant costing \$1,800 when new and after three years use was appraised by Mr. Sloan at \$1,784, which item of value was accepted by all the other engineers presenting appraisals, without question. Complainants challenged this item as being entirely too high for an automobile which had been used for three years. We think this item is too high by at least from \$1,000 to \$1,200.

We are asked by counsel for defendant in this valuation

to state separately the different items allowed for physical property and "intangible" values. In the case of *Appleton Waterworks Company v. Railroad Commission*, 154 Wis. 121, the Court, answering a similar request, properly stated the rule as follows:

"However the fundamental difficulty with the attempt to set a definite sum as the measure of going value is that it is an attempt to divide a thing which is in its nature practically indivisible. The value of the plant and business is an indivisible gross amount. It is not obtained by adding up a number of separate items, but by taking a comprehensive view of each and all of the elements of the property, tangible and intangible, including property rights, and considering them all, not as separate things, but as inseparable parts of one harmonious entity, and exercising the judgment as to the value of that entity. In this way the going value goes into the final result, but it would be difficult for even an expert to say how many dollars of the result represent it."

We adopted this rule in the *McGregor-Noe Case*,* *supra*, and we see no good reason why we should depart from it in this case.

We think it would serve no useful purpose to enter upon an elaborate and detailed comparison of the several appraisals by the other engineers submitted in this case, and of their several estimates of value and units of cost and estimates of "intangible" values and the different theories used by each in arriving at his estimates for reproduction of defendant's plant. We have carefully considered each in this case. It is essential to always bear in mind that all such appraisals by engineers using the "reproduction new" theory are only opinion estimates of cost of such witnesses of the property thus appraised.

Upon a full consideration of all the evidence introduced in this case, the Commission finds as a fact that the fair present value for determining reasonable and just rates in this case, of all the property of the (1) local exchange, (2) rural lines, and (3) toll lines of defendant company, as of date December 31, 1913, used and useful by defendant company in the service of the public, considering said plant

* Syllabus in Commission Leaflet No. 33, p. 932.

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and each class of its property as a going concern, and taking into account the fact that said plant and each class of its said property is in successful operation, and including engineering, supervision and interest during construction, organization and general expenses, legal expenses, contingent expenses, insurance, general contractor's profit, promotion and other development expenses, working capital, and including all other elements of value, tangible and intangible, as used in the public service in furnishing telephonic service, is as follows: (1) city exchange, \$105,000, (2) rural lines \$42,000 and (3) toll lines \$35,000, making a total sum of \$182,000, which said several sums are hereby fixed and determined by the Commission to be the fair present value of each of said classes of property as of said date, for the purpose of determining reasonable and just rates in this case.

V.

INCOME AND OPERATING ACCOUNT.

No records have been kept by defendant company showing separately the expenses of operating the exchange, rural and toll lines, and the Commission's accountant was unable to prepare statements showing separately the operating expenses of the three divisions of the plant.

The accountant for defendant submitted statements based on mere estimated amounts of the several operating accounts. We do not feel warranted in accepting these estimated divisions.

We include all gross earnings to the company, and all gross operating expenses of the company as shown by the records as kept. It is suggested that defendant company hereafter keep separate accounts showing all its income and operating expenses in the exchange, rural and toll line departments.

Mr. Haddath, in his report, deducted from the gross revenue 75 per cent. of the revenue from the toll business, but left in the operating expenses all of the expense of maintaining and operating the toll plant and equipment, and also

included the entire amount of interest on bonds in operating expenses before arriving at the net revenue.

The following table shows the profit and loss account as shown from the report filed by accountant McShane for the period of five years, ending December 31, 1913.

<i>Operating revenues:</i>	<i>1909</i>	<i>1910</i>	<i>1911</i>	<i>1912</i>	<i>1913</i>
City exchange revenue.....	\$21,553 75	\$18,259 05	\$31,447 96	\$33,355 89	\$34,977 85
Rural lines revenue.....	8,308 15	5,608 89	5,560 81	5,781 05	5,562 45
Toll lines revenue.....	7,854 69	9,784 51	10,458 94	11,952 65	12,645 47
Miscellaneous.....	1,454 04	2,445 05	1,867 74	2,537 75	1,723 53
TOTAL OPERATING REVENUE	\$36,170 63	\$46,097 50	\$49,335 45	\$53,627 34	\$54,909 30
<i>Operating expenses:</i>					
Maintenance.....	\$3,932 43	\$7,205 66	\$5,413 08	\$6,548 72	\$6,621 35
Traffic expense.....	6,847 96	7,648 93	8,212 01	8,707 04	9,206 54
Commercial expense.....	2,693 26	3,946 09	4,178 56	4,705 37	4,250 98
General administrative expense.....	3,164 05	4,580 91	7,134 10	6,057 39	5,711 77
Toll expense (commissions)...	1,107 11	1,761 44	1,500 57	1,737 66	1,584 86
TOTAL OPERATING EXPENSE	\$17,744 81	\$25,143 03	\$26,438 32	\$27,756 18	\$27,875 50
NET OPERATING REVENUE....	\$18,425 82	\$20,954 47	\$22,897 13	\$25,871 16	\$27,533 80

The only item contained in the operating expenses about which complainants make objection is the item of Mr. Hudson's salary of \$5,000 per annum. We understand that this salary is for services as manager of the exchange, rural and toll lines of defendant company. His salary in 1909 was \$3,600, in 1910 it was \$4,200, for 1911 \$4,800, for 1912 \$5,000, and for 1913 \$5,000. While complaint is made against this item, yet complainants offered no testimony to prove that such a salary is exorbitant for the services actually rendered by Mr. Hudson. On the other hand, defendant company offered testimony of other telephone operating managers tending to prove that said salary is not an unreasonable charge against defendant company. It is to be observed that Mr. Hudson owns practically all of the stock of defendant company, except qualifying shares, and his employment by the corporation is not that of a manager at arms length with an independent corporation. Mr. Hudson explained his salary thus: "I draw now \$5,000 a year; I think I started in here possibly at \$1,800 a year, but I am

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not sure about that; I have not had time to look it up; when we built this plant my recollection is that I was drawing \$3,000 a year, and a year, or possibly a little more than that ago, I think I was raised, the salary was raised to \$4,000, and then later, probably a year or more than a year ago, it was raised to \$5,000 a year."

While it may appear from the testimony that Mr. Hudson has been rather liberal — even generous — in allowing himself a salary as manager of defendant company, yet in the absence of any evidence by complainants that said salary is exorbitant and unreasonable, and was intended as a mere scheme or device to divert part of the earnings of the company into an operating expense instead of a net income, we do not feel justified in disallowing any part of it as an operating expense.

VI.

BOARDING AND ROOMING HOUSE RATE.

Defendant company has classified all private residences where more than one boarder or roomer is kept as boarding and rooming houses, and has applied a rate of \$6.00 per annum higher to such residences than to those where one or no boarders are kept. The reasonableness of such a classification is vigorously challenged by complainants as being unreasonable and unjust, and having no proper foundation in fact for such a classification. The proof is undisputed that in no other city or town in this State is there such a classification in existence as is found at Columbia. Complainants offered in evidence testimony showing that at various cities and towns in Missouri where other state educational institutions are located, that no such boarding and rooming house classification is attempted to be made, or an extra charge made therefor. The proof even went beyond this State to show at Lawrence, Kansas, where the university of that State is located, that no such classification or charge is made.

Defendant attempts to justify the classification on the ground that there are a large number of private residences

in Columbia which keep boarders or roomers, and for that reason there should be such a classification in that city while another city having a smaller number of private residences who kept boarders and roomers would not justify such a classification.

A very discriminatory practice of defendant in respect to this rate is that it is charged for a whole year, even though the boarder or roomer should quit immediately, while the collections are made from month to month for this class of service, the same as the other classes of service furnished by defendant. No such rule is enforced by defendant as to any other class of service so far as the proof in this case disclosed. A merchant might take the business rate for one month and cease to do business as a merchant, and he would not be charged a business rate for the remaining eleven months of the year, while the private residence subscriber who might start a school year with two boarders and cease to keep more than one, or none, at the end of the first month, yet defendant would charge such private residence subscriber the rate for the entire twelve months, which would be \$5.50 in excess of the rate during the first month for which the service was actually rendered. We think this practice clearly violates the provisions of the Public Service Commission Law which prohibits discrimination of every kind and class. No one would contend that a doctor who subscribed for a 'phone and continued the practice of medicine for a month only should be charged the remaining eleven months a rate for a profession he was not engaged in.

Mr. Hudson, in testifying in this case, stated that boarding house rates were made for a year. "We would not fool with it for one or two months." He further testified that "I would like to cut the boarding houses out, if they will adjust the rate so I can halfway live; I would be glad to do it; it is a nuisance." He further testified that he only tolerated the rate and classification because of the necessity of "getting revenue to meet the requirements," and that

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he only classified private residences as boarding houses because of the larger number of them in Columbia. There was proof that the students, who number more than two thousand yearly, published a directory of their own, giving their names, residence and telephone number where they resided during their stay at Columbia.

The defendant contends that the extra charge for the boarding and rooming house rate to private residences is made, not on the theory that the boarder or roomer has any right to use the 'phone, but on the theory that the subscriber of the private residence will use the 'phone more by reason of having the two or more boarders in the home. The position of the company on this point is more clearly shown by the testimony of Mr. Hudson, its manager, as follows:

“Q. These boarding houses pay extra on account of these boarders?

A. Yes, sir, not for the boarders, but because a boarding house, the keeper of a boarding house will use a telephone more than if she did not have any boarders.

Q. You permit the boarders to use when the house pays extra?

A. We do not recognize boarders as subscribers; as a matter of fact they do use the telephone.

Q. That is what you charge for?

A. No, sir, it is not for the use of the boarders, it is for the use of the telephone by the keeper of a boarding house.

Q. How much more does a lady who takes boarders use a telephone — any more than a lady who does not?

A. I could not say exactly how much, but of course they use it a great deal, just as a large family uses a telephone more than a small family.

Q. That is, the children use it if you have a large family?

A. Yes, sir, certainly.

Q. If you take any boarders, then the boarders use it?

A. Yes, sir, but we do not recognize boarders as subscribers.”

Table No. 8, which follows, gives a comparison of the telephone rates charged by defendant at Columbia and those charged by other companies in a number of cities in this State having about the same or a larger population than Columbia:

TABLE No. 8

COMPARATIVE STATEMENT OF TELEPHONE RATES IN MISSOURI CITIES

Name	City rate					Rural rate (company furnishes and main- tains equipment)	
	Population	Business	Business	Residence	Residence	Business	Residence
	1910	Special	party	special	party		
Columbia.....	9,662	\$36 00	\$30 00	\$24 00	\$18 00	\$24 00	\$18 00
Carthage (Bell).....	9,483	24 00	.....	18 00	.....	18 00	18 00
Carthage (independent).....	9,483	24 00	21 00	18 00	15 00	.....	30 00
Moberly.....	10,923	36 00	.....	21 00	18 00	18 00	18 00
Sedalia (Bell).....	17,822	36 00	30 00	21 00	15 00	18 00	18 00
Sedalia (independent).....	17,822	24 00	.....	18 00	15 00	.....	.....
Hannibal.....	19,000	36 00	.....	24 00	18 00	18 00	18 00
Joplin.....	32,000	42 00	36 00	24 00	21 00	30 00	30 00
Springfield.....	35,000	36 00	30 00	22 00	18 00	18 00	18 00

From this table of rates it appears that Columbia has a rather high schedule of rates for a city of that size. It can only be justified on the ground of the high class construction and expensive nature of the plant built by defendant.

From a careful reading of all of the evidence in this case, it is clear to our minds that a private boarding and rooming house rate will cause much dissatisfaction, and will practically require the policing of such houses to apply a separate rate from month to month, without discrimination. We have searched in vain for the ruling of some other Commission on this question, but have been unable to find any decision bearing directly in point.

One of the nearest, by analogy, is the case of *Birmingham Waterworks Company v. Truss*, 135 Ala. 530. This was a case where the franchise granted the water company provided a rate for "dwellings," and an attempt was made by the water company to change the classification because the owner kept boarders and roomers. The Court said because "six or seven boarders live in the house and a few others take meals there does not destroy its character as a dwelling."

Again, it was held in *Commonwealth v. Cuncannon*, 3 Brew. 344, 347, that a boarding house is for the accommodation only of those who are accepted as guests by the pro-

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prietor, and is as much a private house as if there were no boarders.

We think there can be no question but what *public boarding houses and public rooming houses*, as defined, in cities and towns paying an occupation tax should pay a higher rate or take a different classification than that of private residences keeping roomers and boarders.

Witness Johnson, who testified in this case and qualified as a telephone operating expert of wide and extended experience, was asked by one of the Commissioners to give his opinion with reference to distinguishing between a private residence and a private boarding and rooming house, and in reply thereto, he stated: "That is a question that I do not believe any two companies go into it the same way; we tried that proposition in several places; I remember when I was in Ohio we tried that same proposition as to where the line of demarcation went between a residence and a place of business, and in that case they had an occupation tax and we charged them a business rate wherever they paid an occupation tax; we had no boarding house rate."

Mr. McHenry, who operates the telephone exchange at Jefferson City, testified that he had no separate boarding house rate in his company's classification.

The proof in this case shows that for the year 1913, there were 161 subscribers who were charged the boarding and rooming house rate by defendant in Columbia. Of course what is said in this opinion is not to be construed to mean that the fraternity houses and university clubs are not to carry a different rate from that of a private residence.

Mr. Hudson testified that there were about 100 private residences which were charged the boarding and rooming house rate. Even figuring the total number of 161 as all being private residences, this makes an additional charge of \$966 against such private residences under the boarding and rooming house rate, and if discontinued would make a reduction in defendant's total gross income of \$966 per annum.

We hold that under the facts and the evidence in this case that the classification of private residences having two or more boarders or roomers as boarding and rooming houses, is unreasonable and unjust; and further, that the application of such rate for a full year, regardless of the fact whether such residences keep boarders during the entire year, is discriminatory and violates the provisions of the Public Service Commission Law against unjust discrimination, and should be abrogated as a separate classification.

VII.

CASH DEPOSIT RULE.

Defendant has in force the following rule with reference to advance payments or cash deposits which it requires at the time of the installation of a telephone for a new subscriber, as follows:

"A deposit of \$3.00 shall be made with each order for service in the city exchange, which deposit will be credited on account of service in the concluding weeks of a full year."

Defendant company denies that this is an installation charge as that term is usually understood. The proof shows that the subscriber making this deposit of \$3.00 is given credit for same on the last months of the year following his installation. Should he discontinue the use of his 'phone before the end of the year, his deposit then becomes a forfeit.

Complainants charge that said rule is unreasonable and unjust and that same should be discontinued. The proof shows that much controversy and dissatisfaction has come about by reason of the enforcement of this rule by defendant company.

Defendant takes the position that the installation of a telephone and furnishing of service makes an immediate outlay on the part of the company, and for that reason it is justified in requiring said deposit of \$3.00. Defendant takes the further position that short term contracts, that is,

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contracts for periods of less than one year, are unprofitable at the regular rate, and that the forfeit of the \$3.00 is justifiable on that ground.

This very contention was very ably and clearly answered by the Railroad Commission of Nevada in a complaint filed against The Pacific Telephone and Telegraph Company, Case No. 207, decided February 21, 1914, and we quote from that opinion,* with our approval, as follows:

"To this reason, it may be answered that every act performed by a telephone company, or any other public utility, that is requisite for the rendering of the service, standing by itself, is an item of expense. The aggregate of those items makes up the aggregate expenses of the public utility. We are not able to appreciate the force of the contention that every specific item of such expense should be specially provided for in the conduct of the business of the utility. It seems to us that the charges made for the service should be so adjusted as to afford the company a fair return for the service as a whole. If attempt is made to single out particular items of expense and provide for them specially, no good reason appears why the same should not be done with regard to *all* items of expense, which would lead to a very complex business situation. The installing of telephones is an essential part of the business of a telephone company. Without such installation, the service cannot be rendered; therefore, sound business policy would seem to require that charges would be applied which would cover the service as a whole, which, necessarily, includes every specific item of expense."

The same question was passed upon by the Railroad Commission of the State of California in the case *In re Goodrich*,† in which the Commission stated:

"The applicant asks the Commission also for permission to charge his patrons an amount of \$5.00 returnable after one year, with interest at 6 per cent., as a guaranty that subscribers will retain service for that period. So many complaints have reached the Commission from the patrons of various public utilities of this State with reference to deposits, that the Commission will in the near future institute proceedings calling into question the reasonableness of this practice; and while not denying the right of public utilities for reasonable protection against possible losses, I deem it advisable to withhold this permission for the present.

* See Commission Leaflet No. 29, p. 896.

† See Commission Leaflet No. 31, p. 12.

The Public Service Commission of the State of Washington, on September 24, 1914, Order No. 1791,* adopted general rules governing telephone companies in that State with reference to cash deposits, and the payment for services in advance. It may be of interest to set forth said rules at length, which are as follows:

RULE NO. 1

"No cash deposit or other security for installation of instruments, for the payments of accounts for local exchange service or long distance service between points within the State of Washington, or for any other purpose, shall be required of any telephone subscriber by any telephone company (other than a city or town) owning, operating or managing any telephone line or part of telephone line, used in the conduct of the business of affording telephonic communication for hire within the State of Washington; *provided*, That deposit may be required for any local or long distance call originating at a pay station."

RULE NO. 2

"Any telephone company may require from any subscriber, payments in advance from month to month for local exchange service and may disconnect any telephone, private exchange, or any other instrumentality, device or apparatus of any subscriber and discontinue such subscriber's service, on or after the expiration of ten days from the date on which any account for local exchange service or long distance service becomes due and payable (in advance or otherwise), when any such account remains unpaid after the expiration of ten days from such date and from the date of delivery of itemized account to such subscriber."

In *Cole v. Fort Scott and Nevada Light, Heat and Power Company*,† 1 Mo. P. S. C. 130, we held that an electric light and water company required to render service upon a meter basis, and where the amount of the bill or charge could not be determined in advance, might reasonably require a deposit or security in the nature of a guaranty for securing the collection for such service. We do not think the same reason exists with reference to the collection of rates for telephone service where such charges are known in advance.

This Commission has no desire to deny to any telephone company the right to reasonably protect itself against loss

* See Commission Leaflet No. 36, p. 305.

† See Commission Leaflet No. 26, p. 1191.

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through the inability or unwillingness of the customers to pay. We see no reason why a charge for three months in advance for every telephone when installed, with charges monthly in advance thereafter, will not fairly and reasonably protect the company against loss. It is possible that rare and exceptional cases might occur when such a method of payment would not be adequate protection. As in the case of private enterprises, public utilities must expect to take some chances. All business involves some risk. We believe that if the company be allowed to charge three months in advance at the time of installing the telephone, and thereafter to collect for one month in advance, it will be fairly and reasonably protected. Such a course will do away with the discrimination complained of, and remove very much of the friction and ill feeling which has been engendered against defendant by the exacting of the \$3.00 deposit. It is the opinion of the Commission that the custom of requiring a deposit of \$3.00 upon the installation of the telephone should be discontinued, and that in lieu thereof, defendant company should be permitted to charge for three months in advance as a condition precedent to the installation of the telephone, and that thereafter one month's advance payment may at all times be required.

This rule is suggested for the city exchange, and not to apply necessarily to the rural subscribers. Since the circumstances might warrant a different rule in other cities and towns by different companies, it is to be understood that the rule here suggested, is for the defendant company under the facts and circumstances as disclosed in this case.

What is said here applies with equal force to the rule of defendant with reference to charging 50 cents where there is a telephone in a house moved to, which is connected up and suitable service can be rendered without further charge.

The charge of 50 cents for such service should be discontinued upon the same principle that the deposit fee of \$3.00 is ordered discontinued.

The report of the Commission's accountant shows that

for the year 1913 the total charges for installation and removal fees by defendant company aggregate \$1,106.10. The report does not disclose how much of this sum was for installation or for removal fees, nor does it disclose how much of the installation fees, if any, were forfeited by reason of the subscribers not using the 'phones for one whole year after the installation of same. Neither are we able to ascertain what amount was received from the 50 cent charge where one subscriber surrendered his 'phone and another subscriber moved into the residence and accepted and used the same without a new installation.

VIII.

RESERVE, DEPRECIATION AND RATE OF RETURN.

The Commission is of the opinion that the rate of return in this case should be at least $7\frac{1}{2}$ per cent., considering the hazard of the telephone business as a whole, and further taking into consideration the fact that the rural and toll lines are considered as a part of the plant in this case.

As to the percentage that should be allowed for annual depreciation reserve and contingencies, the Commission is of the opinion that $6\frac{1}{2}$ per cent. is a reasonable allowance on such a plant, of the size and character of the one here being valued.

Defendant has set aside the sum of \$17,000 as a depreciation reserve, which has been invested by defendant in the following securities: 24 first mortgage 6 per cent. bonds of \$500 each of defendant company, and 50 shares of \$100 each of Southwestern Blaugas Company's 7 per cent. cumulative preferred stock.

The proof in this case discloses that defendant issued its own stock as dividend stock to Mr. Hudson in exchange for its said 24 bonds which it now holds in its reserve.

The Commission's accountant did not include in the statement of the gross earnings as set forth in Table No. 7 the earnings from said bonds and stock now held as reserve,

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but excluded such earnings to be added as a part of the reserve and not as forming any part of the gross income of defendant company.

On the aggregate valuation of \$182,000, and figuring the annual rate of return at $7\frac{1}{2}$ per cent. and the annual rate of depreciation at $6\frac{1}{2}$ per cent., which equals \$25,480 that defendant company is entitled to earn per annum on its entire plant, Table No. 7, giving the total gross income and operating expenses, shows that for the year 1913 the total net income to defendant company was \$27,553.80, which if we deduct \$25,480 from it, leaves a balance of \$2,053.80 that defendant made for said year more than a fair return on said valuation.

The evidence in this case shows that the discontinuance of the classification on boarding and rooming houses and the reduction of that rate of \$6.00 per annum would make a reduction of approximately \$966 from the total gross revenue of defendant company for the year 1913. The discontinuance of the cash deposit and forfeiture rule will amount to approximately \$1,000 per annum as based on the year 1913. The reduction of amounts equal to these two items would about equal the item of \$2,053.80 that defendant should cease taking from the public on the valuation as fixed by the Commission. Of course it is impossible to know just to an exactness the amounts of these several reductions, but it may be reasonably estimated to approximate \$2,000 per annum.

As stated elsewhere in this opinion, the scale of rates charged by defendant company for a city containing the population of Columbia appears to be rather high, and can only be justified by reason of the well and expensively built plant of defendant company. We do not feel justified in saying that said rates are unreasonably high *per se* in considering the population of Columbia, and that the State University is located there, and the high class service which all of the proof discloses is being given by defendant company to its subscribers.

IX.

OTHER PARTS OF COMPLAINT DISMISSED.

1. Complainants contend that 50 cents a month additional for an extension 'phone is excessive and should be reduced. The proof in this case is all one way that such is the accustomed charge throughout the State. Neither the complainants nor the defendant have introduced evidence showing a complete detailed analysis of the cost of maintaining the extension set and the increased use of the 'phone by reason of the extension set. The enormous amount of Commission work has prevented a detailed study and analysis by the Commission's engineers as to the reasonableness of this charge. Without such an investigation, we do not feel that we could intelligently prescribe a rate different from that established by custom as shown by this case, and will therefore dismiss that part of the complaint without prejudice, until a full and complete study of the extra cost of service by reason of the use of the extension 'phone, in some other hearing or investigation to be held later by the Commission, can be had.

2. Complainants further contend that the subscribers should be permitted to own and furnish the extension 'phones. Here again the proof is all one way, that to insure good and efficient service, the telephone company should own all such parts of its instruments and be held responsible for their proper up-keep and service condition.

3. Complainants further ask that free telephone service be furnished the city of Columbia and the public schools thereof, by defendant company, for the use of the streets and alleys of said city. It is not contended that such service is provided for in any franchise granted defendant company by the city. The Commission has no power to amend such a franchise at this time and to require such service, which would otherwise be a discrimination, and violative of the Public Service Commission Law. Courts and commissions seem to permit the furnishing of service to cities where the same is provided in the franchise as a part of the consideration for granting same. This Commission has

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not yet had occasion to pass upon that question one way or the other, and the same is left open for future determination. It is sufficient to say we think, under the circumstances in this case, it would be a discrimination to require defendant to furnish the free service as asked by complainants.

4. Complaint is made as to the location of telephones in private residences. The proof discloses that defendant company, on one occasion at least, refused to place the telephone as low as same was requested by the subscriber, for the reason set out in defendant's answer. We do not feel justified, under the evidence in this case, in attempting to issue any general order regulating the location of 'phones, for the reason that the circumstances in each individual case might have a very material bearing as to the proper location of the 'phone in the residence. On complaint of any subscriber the Commission will be in a position to have one of its engineers adjust the matter by personal inspection of the premises, if defendant cannot adjust the same.

An order will be entered in conformity to this opinion.

ORDER.

This cause being at issue upon the complaint and answer on file, and the order of the Commission to ascertain and determine the fair present value of the telephone plant of defendant company, due notice thereof having been given, and both of said causes having been duly heard and submitted by the parties, and full investigations of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed its report containing its findings of facts and conclusions thereon, and having ascertained and determined the fair present value of said plant, which said report is hereby referred to and made a part hereof.

Now, upon the evidence in these cases, and after due deliberation,

It is ordered, 1. That the Commission, upon a full consideration of all the evidence in these cases, finds as a fact

that the fair present value, for determining reasonable and just rates in these cases, of all the property of the (1) local exchange, (2) rural lines, and (3) toll lines of defendant company, as of date December 31, 1913, used and useful by defendant company in the service of the public, considering said plant and each class of its property as a going concern, and taking into account the fact that said plant and each class of its said property is in successful operation, and including engineering, supervision and interest during construction, organization and general expenses, legal expenses, contingent expenses, insurance, general contractor's profit, promotion and other development expenses, working capital, and including all other elements of value, tangible and intangible, as used in the public service in furnishing telephonic service, is as follows: (1) city exchange: \$105,000, (2) rural lines: \$42,000, and (3) toll lines: \$35,000, making a total sum of \$182,000, which said several sums are hereby fixed and determined by the Commission to be the fair present value of each of said classes of property as of said date, for the purposes of determining reasonable and just rates in these cases.

Ordered, 2. That the Commission finds that the classification by defendant company of private residences having two or more boarders or roomers under the classification of boarding and rooming houses, and applying thereto a different rate than that applied to private residences keeping one or no boarders or roomers, is unreasonable and unjust, and that the application of such classification and the rate applied thereto for a full year, regardless of the fact whether such residences keep boarders or roomers during the entire year, is discriminatory, and violates the provisions of the Public Service Commission Law prohibiting "every unjust or unreasonable charge made or demanded for any service," by reason of the unlawful discrimination in the classification of private residences keeping two or more boarders or roomers as boarding and rooming houses.

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Ordered, 3. That defendant company be, and it is hereby, required to cease and desist from requiring a deposit of \$3.00, or any other sum, from its subscribers upon the installation of a telephone, and the charging of 50 cents where there is a telephone in a house moved to, which is connected up and suitable service can be rendered without further expense or charge to the defendant company.

Ordered, 4. That from and after the effective date of this order, such cash payments or deposits in advance shall be discontinued, and payment in advance for three months may be demanded and required by defendant company as a precedent to the installation of a new telephone service for any subscriber in the city exchange of Columbia, and that after the expiration of the three months' period, defendant company shall be permitted to demand and receive one month's payment in advance as a condition for the continuance of such service.

Ordered, 5. That complainants and defendant company be at liberty at any time after an actual test of operation under the rates, rules, regulations and classifications herein fixed has been made, to apply to the Commission, by motion or supplemental petition, upon such proof as either may desire, and upon reasonable notice to the complainants or defendant company, for a modification or revision of the rates, rules, regulations and classifications prescribed herein, if found to be unreasonable or unjust to the public or said defendant, or shall fail to provide a fair and just return on the fair present value of defendant's properties as fixed herein.

Ordered, 6. That defendant company be, and it is hereby, required to file with this Commission on or before May 1, 1915, a revised schedule of rates, rules, regulations and classifications in conformity with the opinion filed herein and the order entered herein, and that such rates, rules, regulations and classifications shall become effective on said May 1, 1915, without further notice.

Ordered, 7. That all other parts of the complaint filed herein be, and the same are hereby, dismissed, for the reasons set forth in the opinion.

Ordered, 8. That this order shall take effect on May 1, 1915, and that the Secretary of the Commission forthwith serve on J. Ben Sims, one of the complainants herein, and on defendant, Columbia Telephone Company, certified copies of this order and the opinion filed herein.

Ordered, 9. That defendant Columbia Telephone Company be, and it is hereby, required to notify the Commission, in the manner required by Section 25 of the Public Service Commission Law, within ten days after receipt of a certified copy of this order and the opinion herein, whether the terms of this order are accepted and will be obeyed.

MONTANA.

Public Service Commission.

SHIELDS VALLEY COMMERCIAL CLUB v. THE MOUNTAIN STATES
TELEPHONE AND TELEGRAPH COMPANY.

Docket No. 455 — Order No. 118.

Decided February 25, 1915.

Establishment of Reasonable Non-discriminatory Rates Ordered.

Complaint alleged that the service of the defendant in the Shields River valley was unsatisfactory and that the charges were unreasonable and discriminatory.

That part of the system subject to complaint had formerly been a rural telephone company which the defendant company had taken over. Later operating difficulties began to develop and the defendant decided to abandon all that portion of the former rural telephone company north of Clyde Park, including Wilsall and the Sedan, Latt and Dorsey lines. Thereupon the business men of Wilsall purchased this portion of the defendant's property.

The complainants contended that as the area which they formerly reached had been greatly decreased by the sale of the lines north of Clyde Park their telephones were less valuable, and that if the rates had formerly been reasonable they must now be unreasonably high. Complainants suggested that they should continue to have free service with those telephones north of Clyde Park with which they had enjoyed free service prior to the sale.

Held: That the independent company owning the lines north of Clyde Park could not be obliged to handle the complainants' business free.

Ordered, That the defendant discontinue the discriminatory charges which it had "inherited" with the purchase of the rural line and file a schedule of non-discriminatory rates together with a full explanation of the basis used.*

* The defendant on March 30, 1915, submitted its standard scale of rates. As the schedule submitted did not differ from that originally filed with the Board, which would automatically become effective upon the expiration of contracts, the Board decided that its authorization was not necessary, but stated that the application of the standard rates should be contemporaneous with the rendering of reliable service.

Toll Rates Approved.

The defendant had built a toll line from Livingston to Wilsall and connected this with the Wilsall exchange which it had previously sold to the Wilsall business men. Toll charges of 15 cents, Clyde Park to Wilsall, and 20 cents, Clyde Park to Livingston, were made. Complainants alleged that these charges were unreasonable.

Held: That the toll charges for messages between Clyde Park and Wilsall and Clyde Park and Livingston were not unreasonably high.

Specific Improvement in Service Ordered.

The engineer of the Commission inspected the lines of the defendant, found many of these in very bad condition, and recommended various improvements.

The defendant stated that it had intended to build an entirely new plant at Clyde Park and furnish "standard service," but that a sufficient number of subscribers could not be obtained to make the investment remunerative; that even if it did decide to construct a new plant the financial market was in such a condition as to make the raising of money practically impossible.

Held: That when a public service corporation is serving the public and the rates for such service are in and of themselves fair and reasonable for the service rendered, the company must, in exchange, render dependable service, and the fact that a branch line (which is in the nature of a feeder) does not of itself pay, while the main system is enjoying prosperity, is not a good and sufficient reason for non-dependable service.

Ordered, That the recommendations of the Commission's engineer concerning the care and up-keep of the physical property be followed.

APPEARANCES:

H. J. Miller, for complainant.

C. G. Cotton, division commercial superintendent, for defendant.

REPORT.

Following complaint of the Shields Valley Commercial Club, a hearing was ordered and held at Clyde Park, December 15, 1914.

That part of the defendant's system, subject of complaint, was originally a rural or farmers' telephone company, with a central exchange at Clyde Park. The several lines supplied by the central exchange were:

Dorsey Line, 31 miles, passing through Wilsall, supplying that point, and extending north as far as Dorsey;

Sedan Line, 13 miles, extending west from Wilsall;

Latt Lines, 16 miles, extending east from Wilsall;

Brackett Creek Line, 11 miles, extending west from Clyde Park;

Rock Creek, Cottonwood and Horse Creek Lines, 31 miles, extending east and north from Clyde Park;

Fall Creek Line, connecting with trunk line, 6 miles south of Clyde Park and extending east and south 7 miles;

Willow Creek Line, connecting with trunk line 6 miles south of Clyde Park and extending west.

In addition to the above there was the trunk line, Clyde Park to Livingston. These properties, owned by Blair and Company, were purchased by the defendant January 1, 1912.

The defendant claims that after taking over the properties, operating difficulties began to develop until it was decided to abandon that portion north of Clyde Park, which includes Wilsall, the Sedan, Latt and Dorsey lines. However, the business men of Wilsall made an offer for that part of the company's holdings, and the same was accepted, transfer being made March 7, 1914. Part of the complaint of Shields Valley Commercial Club is that the territory they formerly reached having been greatly circumscribed by this transfer, their 'phones were of far less value than previously, and consequently the rate, if theretofore reasonable, must now be unreasonably high for service rendered. They also advanced the argument that for the reason they previously enjoyed the territory involved in transfer and having an installation of sixty-four telephones, they are now entitled to the same service free of charge. This idea cannot be entertained by the Commission, as it would cause the Wilsall exchange, now an independent company, to handle complainant's business free. The reasonableness of the rates complained of will be treated with further in this report.

Subsequent to sale, March 7, 1914, the defendant has built an entirely new toll line from Livingston to Wilsall, about twenty-five miles, at an expense of \$18,000. This line is connected into the Wilsall exchange; a toll of 15 cents, Clyde Park to Wilsall, and 20 cents, Clyde Park to Livingston, is charged. The Commission does not deem these rates unreasonably high, and so holds.

Much evidence was introduced, which tended to show that the physical condition of lines out of Clyde Park exchange was such that reasonable service was impossible. Witnesses testified that poles were rotted off and fallen down, wires strung on 2 x 4's and fences, and that some poles had been reset so often that lines across roadways are so low that a wagon loaded with hay could not conveniently pass under. Section 4400 of the Revised Codes of Montana provides in part:

"But the same shall be so constructed as not to incommode or endanger the public in the use of said roads, streets or highways."

Respondent for its defense stated that it had fully intended building an entirely new plant at a cost of \$25,000 at Clyde Park, and giving what it termed "standard service;" that a canvass of the situation developed that only 108 subscribers could be obtained who were willing to pay the established rates for the different classes of service, which would make the investment non-remunerative; further, that even if they decided to construct a new plant, the financial market was in such condition as to make the raising of money practically impossible.

The Commission must hold to the principle that, when a public service corporation is serving the public and the rates charged for such service are in and of themselves fair and reasonable for the service rendered, the company must, in exchange, render dependable service, and the fact that a branch line (which is in the nature of a feeder) does not of itself pay, while the main system is enjoying prosperity, is not a good and sufficient reason for non-dependable service.

Since the hearing at Clyde Park the engineer of the Commission has visited all of the property of defendant in Shields Valley and examined its physical condition first hand. Following is his report and recommendations:

The toll line and Fall Creek line are new and in good condition. The Willow Creek line is in poor condition and needs attention. This line has four subscribers. The Brackett Creek line is in such condition that, excepting the crossings, which have had recent attention, the poles must

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be replaced at an early date or continued trouble will result. This line has seven subscribers. The Rock Creek, Cottonwood and Horse Creek circuits are on the same lead from Clyde Park east for about five miles, and then separate. The Rock Creek line is in reasonably good condition. The Horse Creek line is in poor condition and while circuit was clear, at time of visit, five poles were down. On this line two drops across a road have only fifteen feet clearance. This is not sufficient and a standard of not less than eighteen feet should be established. The Cottonwood line was clear of trouble, but repairs are necessary. These three circuits have forty-four subscribers. On all leads additional 'phones will necessitate new circuits, but to add new circuits will also necessitate the expense of general overhauling and rebuilding of different parts of the system. Re-routing will also be necessary, as some of the lines run over private property. The lines are at present apparently in condition to give fair service, but with the frost out of the ground, the true condition will develop. A patrol should be maintained until the system is put in shape to render dependable service, by the resetting or replacing of rotted or broken poles and the raising of crossings to a standard height.

During the period the system was owned by Blair and Company, the making of rates was purely an arbitrary matter, and no uniformity existed. Different rates for the same class of service were not unusual and many discriminations existed. The defendant company inherited these conditions and rates with the purchase of the property, and while some rates were verbal and some covered by contract, no attempt has been made by the defendant since that time to establish a non-discriminatory schedule of rates.

ORDER.

Wherefore, this case being at issue upon complaint and answer filed, and having been duly heard and submitted by the parties hereto, and full investigation of matters and things involved having been had, and the Commission having on the date hereof made the foregoing report containing its findings of fact and conclusions thereon, which said report is made a part hereof.

It is ordered, That that part of complaint relating to toll line charges be and the same is hereby dismissed;

It is further ordered, That the recommendations of the Commission's engineer concerning care and upkeep of physical property be followed;

It is further ordered, That within thirty days from the date hereof, the defendant, The Mountain States Telephone and Telegraph Company, shall file with the Commission, for its consideration, a schedule of rates, non-discriminatory, together with a full explanation of basis used.

The Secretary is directed to serve upon the parties hereto a true and certified copy of this report and order and to obtain acknowledgment thereof.

Done this twenty-fifth day of February, 1915.

NEBRASKA.

State Railway Commission.

IN THE MATTER OF THE APPLICATION OF THE DOUGLAS TELEPHONE COMPANY FOR AUTHORITY TO PUBLISH A RATE OF \$2.50 PER MONTH FOR A BUSINESS 'PHONE AND A RESIDENCE 'PHONE CONNECTED ON THE SAME LINE.

Application No. 2371.

Decided March 26, 1915.

Establishment of Rate for Business Telephone and Residence Telephone on Same Line Authorized.

ORDER.

WHEREAS, the Douglas Telephone Company has made application to the Nebraska State Railway Commission for authority to publish a rate of \$2.50 per month for a business 'phone and a residence 'phone connected together on the same line,

And it appearing to the Commission upon due investigation and consideration that the application is reasonable and warranted by existing conditions,

It is ordered by the Nebraska State Railway Commission, That the desired authority be, and the same is hereby, granted, the rate as above authorized to become effective from and after April 1, 1915.

Made and entered at Lincoln, Nebraska, this twenty-sixth day of March, 1915.

IN THE MATTER OF THE APPLICATION OF THE LINCOLN TELEPHONE AND TELEGRAPH COMPANY FOR AUTHORITY TO DISCONTINUE ITS TOLL STATION AT HELVEY.

Application No. 2392.

Decided April 20, 1915.

Discontinuance of Toll Station Authorized.

Application having been made by the Lincoln Telephone and Telegraph Company for authority to discontinue its toll station at Helvey, for the reason that the receipts at said station average but \$1.45 per month, an amount not sufficient to cover repairs and maintenance on toll line and booth, and for the further reason that citizens of Helvey are served by party lines connected with applicant's Fairbury exchange and also by lines connected with the exchange of the Daykin Telephone Company, and it appearing to the Commission, upon due investigation and consideration, that the application is reasonable and warranted by existing conditions, the desired authority was granted, subject to complaint, and it was directed that the applicant be notified by letter of the action taken.*

* Similar orders dated April 20, 1915, were issued authorizing the Lincoln Telephone and Telegraph Company to discontinue its toll stations at Bower and Lorton.

NEW YORK.

Public Service Commission — Second District.

IN THE MATTER OF THE APPLICATION OF P. E. LEWIS OF UTICA
v. NEW YORK TELEPHONE COMPANY.*

Case No. 3937.

Decided April 14, 1915.

Extension of Exchange Radius Ordered — Toll Charge Between Exchanges Ordered Eliminated — Exchange Rates Adjusted.

Complaint was made of the introduction of a toll rate of 5 cents for "two-number" messages and 10 cents for "particular party" messages between Utica and the exchanges of the respondent known as New Hartford and Whitesboro.

The respondent had purchased the property of the Utica Home Telephone Company, which was operating in Utica, Whitesboro and New Hartford, and had consolidated this property and its own Utica system.

The Utica Home Telephone Company had in effect certain rates for New Hartford and Whitesboro, which gave subscribers the right to talk with Utica, and certain rates for Utica which gave subscribers the right to talk with New Hartford and Whitesboro, and subscribers in New Hartford and Whitesboro were entitled to talk with each other. By the consolidation, the Utica rates for former Home company's subscribers were raised, and after the consolidation the New Hartford and Whitesboro rates were slightly changed. Later, the right to talk between Utica and New Hartford or Whitesboro under local contract rates was taken away and a toll charge instituted which constituted an increase in rates and diminished the value of the service rendered the subscribers in New Hartford and Whitesboro, and also the subscribers in Utica. This toll charge was particularly onerous to people residing in New Hartford and Whitesboro who had large use for Utica service, and these subscribers, in order to obtain Utica service most economically, were obliged to take Utica rates plus mileage charges, and be confined to Utica service, being unable to talk with their neighbors in New Hartford or Whitesboro except upon payment of a toll charge. Under these restricted service conditions the number of subscribers in New Hartford and Whitesboro was considerably diminished.

* Cases numbered 3938-3942 inclusive, brought on complaints by A. P. Seaton, G. A. Dagwell, G. T. Anderson, A. A. Cole and E. E. Griffiths respectively against the defendant New York Telephone Company were heard with this case and the opinion and order applies to all six cases.

Held: That in view of the limited service furnished and the decrease in the number of stations, respondent's present rates limited to purely local service in New Hartford and to purely local service in Whitesboro were excessive;

That while respondent's present New Hartford and Whitesboro rates for service restricted to those exchange areas with the present number of subscribers, were, in view of the previous service history, excessive, it did not follow that such rates were compensatory for service which included added free service to and from Utica;

That the New Hartford and Whitesboro exchange areas lie so close to Utica that they should properly be deemed suburbs of Utica and the telephone rate in that territory should be so arranged as to induce the freest possible use of that facility;

That the respondent should render a common local service covering Utica, New Hartford and Whitesboro, and should discontinue the toll charge for messages between Utica and New Hartford or Whitesboro;

That the respondent's Utica rates should be extended so as to cover the New Hartford and Whitesboro exchange areas with an amendment providing for a four-party business rate to business subscribers in New Hartford and Whitesboro.

APPEARANCES:

Lynch, Willis and Titus, for complainants.

J. L. Swayze and George R. Grant, for respondent.

OPINION.

DECKER, *Commissioner*:

These six cases were brought on complaints filed during the latter part of 1913. After the filing of answers hearing was first held December 5, 1913, when complainants were not ready to proceed. Complainants had brought an action in the Supreme Court to restrain respondent from exacting rates in excess of those fixed in a certain franchise or permit granted to the Utica Home Telephone Company, the physical property of which company had been taken over through purchase by respondent, New York Telephone Company. Subsequently that petition of complainants was denied by the Court, and thereupon these cases were again brought on for hearing before the Commission on October 5 and November 6, 1914, and they were finally submitted for determination upon briefs filed during December, 1914.

The cause of complaint is the introduction of a toll rate between Utica and the exchanges of respondent known as New Hartford and Whitesboro. The Whitesboro exchange area includes Whitestown, Yorkville, and New York Mills. This toll rate, 5 cents on number calls and 10 cents on particular personal calls, was established November 1, 1913. Prior to that date telephone subscribers in New Hartford talked without toll to Utica, and those in the Whitesboro exchange area talked without toll to Utica, and Utica subscribers talked without toll to each exchange. The New Hartford and Whitesboro subscribers also talked with each other without toll charge. These base areas of New Hartford and Whitesboro adjoin each other and both join on the Utica area. New Hartford, with about 1,400 inhabitants, is built up closely against the Utica boundary, and the localities comprised in the Whitesboro exchange area are settled close together with that area abutting upon Utica. The testimony indicates that this exchange area has a population of 7,800. Numerous business men of Utica live in New Hartford and the Whitesboro area, and apparently some persons having business interests in the Whitesboro section live in Utica.

In August, 1912, the New York Telephone Company purchased the property of the Utica Home Telephone Company which was operating in Utica, and at that time had a large portion of the Utica telephone business and all, or practically all, of the telephone traffic in Whitesboro and New Hartford. The telephone systems of the two companies were physically consolidated about November 23, 1912.

Just prior to that date the New York Telephone Company had in Utica 4,579 telephones. These included telephones used by subscribers also taking the Home Telephone Company's service and which are described as "duplicates." The Home company had 3,153 telephones, not including any such duplicates. Upon consolidation and immediately after November 23, 1912, the New York company had in Utica 7,699 telephones in service.

Prior to the consolidation the Utica Home company had

in New Hartford (no duplicates) 250 telephones, and in Whitesboro (no duplicates) 266 telephones. On September 1, 1914, shortly before the hearings in these cases, the count stood Utica, 8,162; New Hartford, 137; Whitesboro, 245. While the total number of telephones in Utica has considerably increased, the total number in New Hartford has decreased about 45 per cent. and the number in Whitesboro has decreased about 8 per cent.

The effect of the introduction of the toll rate upon the number of telephone messages between Utica and New Hartford and Whitesboro cannot be shown, since no record of the calls between those places was kept prior to the introduction of the toll charge, but immediately after the introduction of the toll, November 1, 1913, the toll calls during the month of November, 1913, from Utica to New Hartford were 6,409, and from Utica to Whitesboro 6,204. In August, 1914, the toll calls from Utica to New Hartford were 2,296, and from Utica to Whitesboro 3,969, showing a great reduction in the number of calls from Utica to each of those exchanges by comparison of the traffic in November, 1913, with the traffic in August, 1914. The toll traffic from New Hartford to Utica was 5,203 calls in November, 1913, and 2,039 in August, 1914. The toll calls from Whitesboro to Utica in November, 1913, were 5,626, and in August, 1914, 4,298.

Before the consolidation the Utica Home company had in force in Utica the following rates:

	UTICA.	<i>Business</i>	<i>Residence</i>
Direct line		\$36 00	\$22 00
Two-party		30 00	18 00
Four-party
Farmer		24 00	24 00

At that time, November 23, 1912, the New York company's Utica rates were:

	UTICA.	<i>Business</i>	<i>Residence</i>
Direct line		\$60 00	\$33 00
Two-party		48 00	27 00
Four-party		36 00	21 00
Farmer		27 00	27 00

These were amended August 1, 1913, as follows:

	<i>Business</i>	<i>Residence</i>
Direct line	\$60 00	\$36 00
Two-party	48 00	30 00
Four-party .....	.....	24 00
Farmer	30 00	24 00

Such amendment increased the direct line residence rate \$3.00, two-party residence rate \$3.00, four-party residence rate \$3.00, reduced the farmer residence rate \$3.00 and struck out the four-party business rate of \$36.00. The amendment also added optional message rates for two-party lines of \$33.00 for six hundred messages, excess 4 cents each; \$39.00 for eight hundred messages, excess 4 cents each; and \$45.00 for one thousand messages, excess 3 cents each.

These rates of August 1, 1913, have since continued in force for the Utica subscribers. November 1, 1912, the New York Telephone Company having acquired the Home company property in New Hartford and Whitesboro and having no separate telephone system in those areas, immediately changed the rates for New Hartford and Whitesboro as follows:

	<i>Business</i>	<i>Residence</i>
Direct line	\$36 00	\$24 00
Two-party .....	.....	.....
Four-party	24 00	18 00
Farmer	24 00	18 00

These changed the Home company's former rates in the following respects: Direct line residence \$2.00 increase; four-party residence \$2.00 increase; farmer line residence \$6.00 reduction.

Now, from November 1, 1912, to November 1, 1913, there was no change in the New Hartford or Whitesboro rates, and during that period of one year subscribers taking the rates above mentioned for those exchanges were able, as before, to talk with Utica without charge, and Utica subscribers were able to talk with New Hartford and Whitesboro without charge. It follows that the institution of the

toll charge between these exchanges and Utica cut directly and to a great extent into the privileges which had long been enjoyed by the New Hartford, Whitesboro, and Utica subscribers. Such action suddenly and completely segregated New Hartford and Whitesboro from Utica telephonically except by payment of toll, and it thereby increased the rates of subscribers to the amount of the tolls by cutting off entirely the privilege of free conversation. The amount of the toll charges collected since the toll charge was established measures merely the amounts actually paid for messages deemed necessary by the calling subscribers. Such amount of toll charges necessarily falls far short of showing usage of the wires to and from Utica which formerly existed and would continue to exist under free local service to and from Utica at the contract flat rates.

The result of the toll charge has been to diminish the number of New Hartford and Whitesboro subscribers, so that now the New Hartford business subscriber pays from \$24.00 to \$36.00 per year for the privilege of talking to 137 other subscribers, and the residence subscriber pays for the same service from \$18.00 to \$24.00 per year. The same thing results from the 245 subscribers in Whitesboro. Obviously the value of telephone service to a subscriber depends largely upon the number of other subscribers with whom he can communicate. There may be segregated localities with subscribers as few in number as those above shown for New Hartford and Whitesboro where these rates would not upon complaint be held unreasonable. On the other hand, with these rates in force at New Hartford and Whitesboro and formerly including the right to talk with Utica, and the sudden taking away of the privilege of free communication with Utica, the subscribers in New Hartford and Whitesboro were entitled, in the opinion of the Commission, to regard the continuation of those rates for the resulting restricted service in New Hartford and Whitesboro as excessive. It is plain that the real diminution in service and value of service was caused by putting in the toll charge to and from Utica.

Respondent claims that the number of subscribers in these localities has been reduced by an agreement between the discontented users of telephones there residing. This may or may not be correct, but if it is, the dissatisfaction with respondent's action is nevertheless made more manifest and emphatic, and we find no basis in that contention for holding that such rates in view of the service history are reasonable. It is true that complainants do not directly claim that these local rates are unreasonable, but they do so nevertheless and with force and like effect when they attack the reasonableness of the toll charge in addition to respondent's rates for the confined local service. If respondent, when instituting this toll charge, had materially reduced the local rates in New Hartford and Whitesboro, a somewhat different case would be presented.

A further result of this toll charge to and from Utica has been the taking of Utica service by persons residing in New Hartford and Whitesboro at Utica rates plus mileage charges, with no right whatever to talk with their neighborhood subscribers in New Hartford or Whitesboro as the case may be. Two of these subscribers in New Hartford paid \$32.40 yearly plus the Utica rate, and two others paid \$12.00 each plus the Utica rate. Four business places in Whitesboro pay an average of \$69.00 plus the Utica rate. Each of these mileage subscribers must pay a toll to talk with other New Hartford or Whitesboro local subscribers, although they may live the shortest possible distance away.

To recapitulate, the Utica Home company had in effect certain rates for New Hartford and Whitesboro which gave subscribers the right to talk with Utica, and certain rates for Utica which gave subscribers the right to talk with New Hartford and Whitesboro, and subscribers in New Hartford and Whitesboro were entitled to talk with each other. The Utica Home company's property was taken over through purchase by the New York company. By the consolidation the Utica rates for former Home company's subscribers were raised. After the consolidation the New Hartford and Whitesboro rates were slightly changed. A

year afterward the right to talk under local contract rates between Utica and New Hartford or Whitesboro was taken away and a toll charge instituted, which constituted an increase in rates and diminished the value of the service rendered to subscribers in New Hartford and Whitesboro and also to subscribers in Utica. This toll charge also carried a material increase in rates to people residing in New Hartford and Whitesboro who had large use for Utica service, and to get it most economically were obliged to take Utica rates plus mileage charges and be confined to Utica service except on paying a toll to talk with their neighbors in New Hartford or Whitesboro. While we have found that the present New Hartford and Whitesboro rates for service restricted to those exchange areas with the present number of subscribers are in view of the previous service history excessive, it does not follow that such rates are compensatory for a service which included added free service to and from Utica. It is in evidence that the Utica Home company was in poor condition financially, did not pay dividends nor provide for appropriate depreciation, and it may well be that the combined service should have been rendered at higher charges.

It also appears that before the consolidation the telephone service in Utica was divided between the two companies, and the Utica Home company had in effect lower rates than the New York company was charging, and lower than the latter company made effective upon the consolidation. Complainants rather insisted at the hearing that Utica customers were deprived unrightfully of the lower Utica Home local rates by the consolidation. We can not indorse that view. With about half of the telephones, speaking roughly, it could give a lower flat rate than if it were handling all of the Utica local service, and when the New York company took over the Utica Home telephones in Utica, the service being unified was increased in value. Under the circumstances we think some higher rates in Utica than the low charges formerly applied by the Home company were justified. Those who were using telephones

of both companies had their total cost reduced, while those who used the telephone of the one company had their service increased, and the old Utica Home subscriber paid a higher charge. Without passing upon the Utica rates now in force, since there is no complaint against them here, we can and should say that these rates were not in anywise rendered unreasonable by the taking over of the Utica Home property in Utica, with the result of providing about double the service at the New York company's rates. The same considerations which enable us to hold that the New Hartford and Whitesboro rates are, generally speaking, too high for the diminished service now given, in view of the previous history under those rates, warrant a ruling that the additions to the Utica service resulting from the consolidation tended generally to favor rather than injure the Utica subscribers. This as applied to Utica subscribers is qualified by the subsequent action of the New York company in establishing a toll rate between Utica and New Hartford and Whitesboro, thus diminishing the service privileges of the Utica subscriber.

We may assume that the respondent is correct in its contention that the old rates in New Hartford and Whitesboro were too low for the combined local service including Utica, and that for such combined service it was entitled to increased charges. In providing a remedy by establishing toll charges to and from Utica it wholly ignored the effect of such action upon the value of its service in New Hartford and Whitesboro, and to an extent in Utica under the local rates which it continued in force. If it was right to put in this toll charge it should have materially lowered its local rates in New Hartford and Whitesboro, but in doing that it would still have reduced the service privileges of its Utica subscribers by denying them the right to talk at Utica rates with New Hartford and Whitesboro.

Respondent's representatives oppose an optional rate basis whereby New Hartford and Whitesboro subscribers satisfied to pay toll to Utica might continue to use the local rates, while those not satisfied to pay a toll to Utica might

take the Utica rates and have also the privilege of talking locally in New Hartford and Whitesboro. Such optional rate is claimed by them to be unsatisfactory as imposing a confused operation and also improper because not according to the respondent a sufficient revenue. Undoubtedly there would be some confusion both in operation and listing, and it may be that the additional revenue received from those taking the combined service at Utica rates would not be fairly compensatory as a whole. A comparison of the two rate schedules indicates that spreading the Utica rates over the entire New Hartford and Whitesboro area would be perhaps a better plan, with a slight amendment of the Utica schedule to fit the situation of subscribers in New Hartford and Whitesboro.

The so called "farmer rates" apply from outlying territory and need not be considered in this case. Complainants are not interested in these rates. The New Hartford and Whitesboro exchange areas lie so close to Utica that they are properly to be deemed suburbs of Utica, and telephone rates in this flat rate territory should be so arranged as to induce the freest possible use of that facility, which has become for most people a business and household instrumentality of importance and with many a practical necessity. There are business houses and manufacturing establishments, some of which are large, and most of which have occasion to telephone daily, and often frequently during the day, to Utica and to receive communication from Utica. Many of the residences in this outlying territory are those of Utica business men. The business, social, and family requirements are such that as a whole such territory should be in practice added to the Utica service. In some situations the Commission would not hesitate to make an optional rate basis giving the subscriber the choice of local rates with a toll to the trading center, or a straight higher rate taking in both the local service and conversation with the adjacent center of trade. Each case must be decided according to its peculiar facts. In this case we think there is sufficient option in the varying Utica rates themselves

with an amendment of the business rate to provide a four-party rate in New Hartford and Whitesboro for small business users. The present Utica rates per annum restated are as follows:

	<i>Business</i>	<i>Residence</i>
Direct line	\$60 00	\$36 00
Two-party	48 00	30 00
Four-party line .....	.....	24 00

This should be amended for New Hartford and Whitesboro business subscribers so as to provide a "four-party rate" of \$36.00. In so providing it is not necessary to extend such four-party business rate to Utica subscribers. Something should be allowed for the restricted business conditions existing in New Hartford and in Whitesboro as against the business conditions in Utica, and for attracting to the company additional business subscribers in the New Hartford and Whitesboro areas.

As has been pointed out, the present rates in New Hartford and Whitesboro with the service restricted to local communication and not even extending from one of those areas to the other are practically paper rates so far as attracting or holding subscribers to the use of respondent's lines. No subscriber or other person residing in New Hartford or Whitesboro has come forward in these cases to express satisfaction with the present rate and service conditions. There is a practical unanimity of discontent with those conditions so far as can be ascertained. The rate conditions established by respondent after the consolidation with the introduction of the toll charge operated decisively to discourage increase and even retention of its business in New Hartford and Whitesboro. They operated to induce general dissatisfaction in those localities and largely in Utica itself, particularly those Utica subscribers having frequent occasion to communicate by telephone with persons connected with the New Hartford and Whitesboro exchanges. The application of Utica rates with the amendment suggested will enable New Hartford and Whitesboro subscribers to talk with each other without toll charges as well as providing flat rate communication with Utica.

A careful study of these cases convinces the Commission that the extension of Utica rates with the additional four-party business rate to New Hartford and Whitesboro affords a simple remedy for a troublesome situation which should never have been created. Order will be entered accordingly.

It is proper to note here that if authority to suspend advanced telephone rates pending investigation had been conferred upon the Commission before these complaints were filed, the proceeding would have been simplified, the subscribers so greatly dissatisfied with the introduction of the Utica toll rate would have retained their telephones pending investigation and order, and the whole matter would have been disposed of to the better satisfaction of all parties to the proceeding. The Legislature has been asked to amend the law in this respect.

ORDER.

These cases having been duly heard and submitted, and the Commission having filed an opinion containing its findings of fact and conclusions therein, and it appearing to the Commission that respondent's Utica rates should be extended to apply to its exchange areas known as New Hartford and Whitesboro, with an amendment of said Utica rates so as to provide a four-party business rate for business subscribers in the New Hartford and Whitesboro areas of \$36.00 per annum, and that it should render a common local service covering Utica, New Hartford and Whitesboro,

It is ordered, That respondent, New York Telephone Company, be, and it is hereby, directed and required to cease and desist from charging its present toll rates between New Hartford and Utica, and between Whitesboro and Utica, and between New Hartford and Whitesboro, that it shall render a common local service embracing its Utica, New Hartford and Whitesboro exchange areas and that for such service as applied to its subscribers in the New Hartford and Whitesboro exchange areas it shall charge not to exceed rates per annum as follows, to wit:

	<i>Business</i>	<i>Residence</i>
Direct line	\$60 00	\$36 00
Two-party line	48 00	30 00
Four-party line	36 00	24 00

It is further ordered, That the said rates shall become effective May 1, 1915, and remain in force for a period of at least three years except as this order may be modified, changed or superseded by the further order of the Commission, and that respondent shall file the notice required by Section 23 of the Public Service Commission Law concerning its acceptance of this order on or before April 24, 1915.

Dated at Albany, this fourteenth day of April, 1915.

OLBISTON COMPANY OF UTICA v. NEW YORK TELEPHONE COMPANY.

Case No. 4285.

Decided April 14, 1915.

Service as Provided for in Previous Order Not Demanded by Complainant — Case Closed upon Records.

ORDER.

The order* of the Commission in this proceeding entered on January 28, 1915, directed respondent to furnish to complainant, upon demand made on or before March 1, 1915, a flat rate private branch exchange telephone service for the apartment houses of complainant with extension stations connected therewith, located within the rooms and offices in said apartment houses not occupied by tenants, and within the power house located on the premises of the complainant, as provided for in respondent's filed tariff for business places, and also directed that respondent should permit any

* See Commission Leaflet No. 39, p. 856.

and all of the tenants in the apartment houses of complainant to contract for telephone service at respondent's direct line rate for residence service in Utica and to have their lines connected by respondent without additional charge with the private branch exchange service and system of complainant and thence by trunk line to respondent's central office in Utica, with separate directory listings for said tenants so contracting. The order* also contained other provisions for the furnishing by respondent of a ringing trunk in the event that twenty or more of the tenants should take the service described, and in addition a sufficient number of trunk lines to respondent's central office to properly handle the traffic of said service and system.

Complainant not having made the demand for service at the rates or charges provided for in the order* heretofore entered, as appears by statements in writing received from respondent under date of February 23 and March 15, 1915,

It is ordered, That this case be, and the same is hereby, closed upon the records of the Commission.

* See Commission Leaflet No. 39, p. 856.

OKLAHOMA.

Corporation Commission.

In re APPLICATION OF SKIATOOK TELEPHONE COMPANY TO
INCREASE ITS RATES.

Cause No. 2224 — Order No. 889.

Decided January 21, 1915.

**Increase in Rates for Business and Residence Telephones Authorized
in Part.**

OPINION AND ORDER.

Application was made by the Skiatook Telephone Company to increase its rates from \$1.00 for residence and \$2.00 for business to \$1.50 for residence and \$2.50 for business telephones.

The application was signed by all of the business men with the exceptions of three and all other subscribers excepting six.

The statement shows the total income of the plant last year was \$1,212.10 and total expense \$1,346.19. We have not analyzed the expenses but in view of the petition being signed by practically all the subscribers, the Commission will authorize a rate of \$1.25 for residence telephone and \$2.50 for business 'phones. \$1.50 for residence 'phones in towns of the size of Skiatook is unreasonable.

It is, therefore, ordered, That the applicant, the Skiatook Telephone Company, may, on and after the first day of February, 1915, charge \$1.25 for residence and \$2.50 for business telephones. The applicant is further ordered to put his plant in good condition and give good service.

Oklahoma City, Oklahoma, January 21, 1915.

FRANK MAHANNAH, TREASURER OF THE HACKBERRY TELEPHONE COMPANY *v.* ARNETT TELEPHONE COMPANY, ARNETT, OKLAHOMA.

Cause No. 2101 — Order No. 903.

Decided February 17, 1915.

Adjustment of Switching Charges Made.

Complaint alleged that the Arnett company had agreed to give the Hackberry company free service over all its lines in consideration of the agreement by the Hackberry company to give the Arnett company like service over all its lines; that the Arnett company had violated its agreement and had refused since January 1, 1914, to give the Hackberry company free service.

It had been the practice of the Hackberry company to allow traffic of lines other than its own to be switched over its line into the Arnett company's exchange, thereby securing connection with the Arnett company's subscribers. When this was discovered by the Arnett company, the service to the Hackberry company was discontinued.

Held: That the Arnett company should charge the Hackberry company 25 cents per telephone per month for switching service, with a minimum of \$1.50 and a maximum of \$5.00 per month for one line.

That the Hackberry company should discontinue the practice of switching lines other than its own over the Hackberry line connected with the Arnett exchange.

Rural Line Connected with an Exchange Considered Part of That Exchange.

The Arnett Telephone Company charged some rural lines connected with its exchange a toll fee of 15 cents per call, when a subscriber from one rural line directly connected with the Arnett exchange desired connection with a party on another rural line also directly connected with the Arnett exchange.

Held: That when a rural line is connected to an exchange, it becomes a part of that exchange the same as if the rural line was in the local exchange area, that the rural subscriber is entitled to the same privileges as all other subscribers directly connected with the exchange, and that no charge should be made for local service to subscribers, other than the switching fee or exchange rental.

OPINION AND ORDER.

BY THE COMMISSION:

The complaint in this case was filed by the Hackberry Telephone Company, by Frank Mahannah, treasurer,

against the Arnett Telephone Company of Arnett, alleging that the Arnett company had violated a contract with the complainant, under the terms of which the Arnett company agreed to give the Hackberry Telephone Company free exchange over all lines operated and controlled by the Arnett company, in consideration of which the Hackberry company agreed to give the Arnett company like service over all lines operated or controlled by it; that the Arnett company had violated its agreement or contract since the first day of January, 1914, in that the Arnett Company had refused to give the Hackberry company free service over its lines.

It was shown by the evidence introduced at the hearing that the Hackberry company owns a rural telephone system consisting of three rural lines with which between 50 and 60 telephones are connected, with a switchboard at Reason; that the Hackberry company owns a line running from Reason to Arnett, with which there are 18 telephones connected; that this line connects with the local exchange of the Arnett Telephone Company; that it has been the practice of the Hackberry company to allow traffic of lines other than its own to be switched over the line between Reason and Arnett, thereby securing connection with the Arnett Telephone Company's subscribers; that when it was discovered by the Arnett Telephone Company that patrons of lines other than those of the Hackberry Telephone Company were obtaining service through the Hackberry company's connection, the Arnett company discontinued the service to the Hackberry company on account of the abuse of the privileges as stated in the contract.

The evidence further shows that it is the practice of the Arnett Telephone Company to charge some rural lines connected with their exchange a toll fee of 15 cents per call when a subscriber on one rural line directly connected with the exchange at Arnett desired connection with a party on another rural line also directly connected with the exchange at Arnett.

The Commission is of the opinion, from the evidence introduced in this case, that the Arnett Telephone Company should charge the Hackberry Telephone Company 25 cents per telephone per month for switching service, with a minimum of \$1.50 and a maximum of \$5.00 per month for one line; that the Hackberry Telephone Company should discontinue the practice of switching lines other than its own over the Hackberry line connected with the Arnett exchange.

The Commission is further of the opinion that when a rural line is connected to an exchange it becomes a part of the exchange the same as if the rural line was in the local exchange area; that the rural subscriber is entitled to the same privileges as all other subscribers directly connected with the exchange, and that no charge should be made for local service to subscribers other than the switching fee or exchange rental.

It is, therefore, ordered, That the Arnett Telephone Company charge the Hackberry Telephone Company 25 cents per telephone per month for switching service, with a minimum of \$1.50 and a maximum of \$5.00 per month for each line switched.

It is further ordered, That no toll charge shall be made by the Arnett Telephone Company where a subscriber on one rural line directly connected with its exchange desires connection with a party on another rural line directly connected with its exchange.

This order shall be in full force and effect on and after the seventeenth day of February, 1915.

Dated at Oklahoma City, Oklahoma, this seventeenth day of February, 1915.

ROGER MILLS TELEPHONE COMPANY v. HAMMON CENTRAL
TELEPHONE COMPANY.

Cause No. 1989 — Order No. 913.

Decided March 23, 1915.

**Rates for Interchange of Service Fixed — Division of Interline Revenue
Fixed.**

SUPPLEMENTAL ORDER TO ORDER No. 834.*

LOVE, *Chairman*:

The original complaint in this case was filed by the Roger Mills Telephone Company against the Hammon Central Telephone Company, asking for physical connection. Although physical connection has been made under the Commission's Order No. 834,* the companies have never been able to agree as to the apportionment of tolls.

Evidence taken at former hearings and statements on file with the Commission show that the Hammon Central Telephone Company has telephone exchanges at the towns of Hammon and Strong City, Roger Mills County, Oklahoma, and that the Roger Mills Telephone Company has a telephone exchange at the town of Cheyenne, Oklahoma; that the Hammon Central Telephone Company has a clear wire extending from Strong City, Oklahoma, to the switchboard of the Roger Mills Telephone Company at Cheyenne, Oklahoma; and that the Roger Mills Telephone Company has a clear wire extending from Cheyenne, Oklahoma, to the switchboard of the Hammon Central Telephone Company at Strong City, Oklahoma; that the Hammon Central Telephone Company has a line running in a westerly direction from the town of Hammon, Oklahoma, for a distance of about nine miles, and that the Roger Mills Telephone Company has a line extending in a northeasterly direction from the town of Cheyenne, Oklahoma, for a distance of about eight miles and connecting with the line of the Hammon Central Telephone Company, extending in a westerly direction from Hammon.

* See Commission Leaflet No. 34, p. 1099.

In its Order No. 834,* the Commission said: "Should further order be desired as to the manner in which these lines shall be operated, the same will be considered by the Commission upon application of either party or the public." The Hammon Central Telephone Company has asked for further order.

Basing its conclusions upon the circumstances in this particular case, the Commission will issue the following supplemental order:

It is ordered, That the said lines connecting Cheyenne and Hammon, and Cheyenne and Strong City, shall be considered toll lines, and the calls, toll calls, and charged for at the rate of 10 cents for calls between Strong City and Cheyenne, and 20 cents for calls between Hammon and Cheyenne; that each company shall be entitled to one-half of the amount collected on all in and out calls between Cheyenne and Strong City and between Cheyenne and Hammon.

It is further ordered, That on all calls from Cheyenne or through Cheyenne to Strong City or points beyond Strong City, the Roger Mills Telephone Company shall pay to the Hammon Central Company all charges from Cheyenne to the place of destination less 5 cents for each call for the use of the portion of the lines between Cheyenne and Strong City; that on all calls from Strong City or through Strong City to Cheyenne or points beyond Cheyenne, the Hammon Central Telephone Company shall pay to the Roger Mills Telephone Company all charges from Strong City to the place of destination, less 5 cents for each call for the use of its portion of the lines between Strong City and Cheyenne; that on all calls from Cheyenne or through Cheyenne to Hammon or points beyond Hammon, the Roger Mills Telephone Company shall pay the Hammon Central Telephone Company all charges from Cheyenne to place of destination less 10 cents for each call for the use of its portion of the lines between Cheyenne and Hammon; that on all

* See Commission Leaflet No. 34, p. 1099.

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calls from Hammon or through Hammon to Cheyenne or points beyond Cheyenne, the Hammon Central Telephone Company shall pay to the Roger Mills Telephone Company all charges from Hammon to place of destination less 10 cents for each call for the use of its portion of the line between Hammon and Cheyenne; *Provided*, that all calls from Cheyenne or through Cheyenne to Herring shall be considered business of the Roger Mills Telephone Company, and all calls from Hammon or through Hammon to Herring shall be considered business of the Hammon Central Telephone Company.

It is further ordered, That all collect or reverse calls shall be received and forwarded by both parties and shall be considered, for the purpose of settlement, as originating at the point where collected.

It is further ordered, That the toll rate charged by either company shall not exceed 25 cents for thirty miles air line distance from point of origin to point of destination.

It is further ordered, That the accounting and settlement for the said tolls and charges herein provided for shall be made and the amounts due thereunder paid monthly by settlement and cash exchange on or before the fifteenth day of the month following the month for which the bills are rendered.

It is further ordered, That both companies give prompt, accurate and satisfactory service.

This order shall be in full force and effect on and after the first day of April, 1915.

Oklahoma City, March 23, 1915.

IN RE APPLICATION OF UNITED TELEPHONE COMPANY OF
AFTON, OKLAHOMA, TO ADVANCE ITS RATES FOR EXCHANGE
SERVICE IN THE TOWN OF AFTON.

Cause No. 2305 — Order No. 917.

Decided April 27, 1915.

**Increase in Rates Authorized where Present Rates are Insufficient to
Provide a Reasonable Reserve for Depreciation and a Fair
Return upon Investment.**

OPINION AND ORDER.

HENSHAW, Commissioner:

The United Telephone Company filed an application with the Commission setting forth that it owned and operated a telephone exchange in the town of Afton, which town contains a population of about 1,800 people; that it has 54 business special line telephones, for which it is now charging \$2.00 per month; three business extension telephones, \$1.00 per month; 52 residence special line telephones, \$1.00 per month; 101 residence two-party, \$1.00 per month; one residence extension, 75 cents, and five rural telephones, \$1.00 per month. The petition states that the investment in the plant is \$12,088.65; that the total operating revenues last year were \$4,054.91; total operating expenses and taxes, \$3,248.35, leaving a net balance of \$806.56. It is claimed by the applicants that the net income would only pay about 6 per cent. interest on the investment and that it has nothing left for depreciation. If a plant is properly maintained out of current income the depreciation would not be more than $2\frac{1}{2}$ or 3 per cent. However, the net income is not sufficient to pay a reasonable income on the investment and depreciation.

Practically all the business and professional men of Afton signed a petition asking the Commission to investigate the application of the telephone company and grant it an increase in rates if the Commission finds that the telephone company is not earning a legitimate profit out of the operation of the exchange at Afton.

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The petition of the business and professional men of Afton indicates a disposition to be on a high plane and fair. In view of the facts in this case, the Commission finds that defendant is entitled to a slightly higher rate than it is now charging.

It is, therefore, ordered, That the defendant, the United Telephone Company, be authorized to charge a rate not to exceed \$2.50 per month for business special line telephones; 50 cents for business extensions; \$1.25 per month for residence special line; \$1.00 for residence two-party line; 50 cents for residence extension; \$1.00 for rural telephones.

That this order shall be in full force and effect and bills rendered thereunder on and after the first day of May, 1915.

Oklahoma City, April 27, 1915.

M. V. MAYFIELD *et al.* v. NORMAN TELEPHONE COMPANY.

Cause No. 1923—Order No. 918.

Decided April 27, 1915.

Improvement in Service Ordered—Additional Charge for Desk Telephones Ordered Eliminated.

OPINION AND ORDER.

LOVE, *Chairman*:

M. V. Mayfield and fifteen other business men of Norman filed a complaint against the Norman Telephone Company, alleging in substance that the service given by the Norman Telephone Company was inadequate and very unsatisfactory; that at times, when one party calls another it is necessary that they go to another telephone and ask the operator to disconnect their telephone from the party with whom they had been previously talking. Complaint further alleges that the rates are too high and that the company is charging 50 cents more per month for a desk telephone than a wall telephone, and asks for an adjustment of the rates.

The Commission sent its engineer to Norman to investigate the conditions complained of, and in his report to the Commission, he stated the conditions were substantially as stated in the complaint; that the switchboard was very poorly maintained, and that the clearing out drops did not operate properly.

On March 12, 1914, the case was set for hearing at Norman, and heard by Commissioner Watson. At this hearing evidence was introduced, and the defendant, by its manager, Mr. W. A. Smith, appeared and acknowledged that conditions were as stated in the complaint. He also stated that at that time the company was preparing specifications and making arrangements for a new building, and the installation of new central office equipment, and would have the same in operation by November 1.

On February 12, 1915, Mr. J. J. Capshaw filed an additional complaint, stating that the conditions complained of by M. V. Mayfield, et al., have not been remedied, and asked that an order be issued as prayed for in the original complaint.

There can be no excuse offered that will justify a telephone company in permitting its equipment to continue in the condition as shown by the evidence in this case. It is the duty of a telephone company to keep its equipment in good condition so that it may, at all times, give good service to the public.

It is the opinion of the Commission that there should not be a greater price charged for a desk or portable telephone than for a wall telephone, as there is only from 50 cents to \$1.25 difference in the cost, and the difference in maintaining is a very small item.

As to the rates of the Norman Telephone Company, after having analyzed their monthly reports to the Commission, we find that the rates now charged are not greater than are necessary to pay a return on the investment and take care of the depreciation, and the rates will not be disturbed at this time except to eliminate the extra charge for desk telephone.

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It is, therefore, ordered, That the Norman Telephone Company maintain its telephone property so that it can give good service at all times, and if the present equipment is not such as will enable it to give the standard of service as required by this Commission that it will install the necessary additional apparatus and that the said Norman Telephone Company give good service at all times.

It is further ordered, That the Norman Telephone Company shall not charge a greater price for a desk telephone than a wall telephone.

This order to be in full force and effect on and after May 1, 1915.

Oklahoma City, Oklahoma, this twenty-seventh day of April, 1915.

SOUTH DAKOTA.

Board of Railroad Commissioners.

**IN THE MATTER OF THE APPLICATION OF THE DELL RAPIDS
TELEPHONE COMPANY, A CORPORATION, FOR AUTHORITY
TO INCREASE ITS SWITCHING RATES.**

F—97.

Decided October 23, 1914.

**Rates for Switching Rural Lines Directly Connected with More Than
One Exchange Fixed.**

ORDER.

On June 13, 1914, this Board made an order* establishing a switching rate for rural telephone lines connected with the exchange of the Dell Rapids Telephone Company on a switching basis under the provisions of Section 8 of the Telephone Law, and for those companies having direct connections with the Dell Rapids exchange and no connections with any other exchange the switching fee was fixed at 25 cents per month for each telephone instrument, or \$3.00 per annum, and as to those telephone companies whose telephone lines connect not only with the exchange of the Dell Rapids Telephone Company but with other exchanges as well, the compensation was fixed at 18¾ cents per month for each telephone instrument, or \$2.25 per annum. Since the filing of that order,* it has come to the knowledge of the Commission that there is one telephone company, known as the Logan Rural Telephone Company, which has direct connection with the exchange of the Dell Rapids Telephone Company and also direct connection with the telephone exchange located at Garretson. In the order* heretofore entered the switching rate to be paid by this company was fixed at 25 cents per month for each telephone instrument, or \$3.00 per annum. It was really the intention of that order* to lay down the rule establishing that where a rural

* See Commission Leaflet No. 32, p. 514.

telephone company had but one connection with a local exchange the switching fee should be not to exceed 25 cents per month for each telephone instrument, and where the same rural telephone company had direct connection with two exchanges the switching fee should not be double the amount paid for switching at one exchange but should rather be on a graduated scale as to all rural telephone companies, including the Logan Township Telephone Company or the Logan Rural Telephone Company, which are connected with the Dell Rapids exchange and also with some other exchange at another point for switching purposes, and the rate was intended to be fixed at $18\frac{3}{4}$ cents per month for each telephone instrument, or not to exceed \$2.25 per annum, and as to all telephone companies connected with the Dell Rapids exchange and also with some other exchange that rate shall apply from the time the previous order* became effective, *viz.*, July 1, 1914, and in case of any dispute between the Dell Rapids Telephone Company and any of said rural telephone companies the matter may be submitted to this Board for consideration and decision.

Dated at Pierre, the Capitol, on this twenty-third day of October, 1914.

IN THE MATTER OF THE LOCATION OF POLES BY TELEPHONE
COMPANY.

Complaint No. 2004.

Decided November 12, 1914.

**Board Without Jurisdiction to Regulate Location of Poles of Telephone
Company.**

OPINION OF COUNSEL FOR BOARD.

I have before me the correspondence in File No. 2004, from Mr. Peter Hanson, concerning the location of the telephone poles of the Olean Telephone Company. From

* See Commission Leaflet No. 32, p. 514.

the letter of Mr. Hanson these telephone poles appear to be on his land, and he now desires them to move the telephone poles off his land on to what he claims is the public highway.

Up to this time the Board of Railroad Commissioners has never been granted any authority by the legislature to pass upon cases of this nature. It has no authority or jurisdiction whatever to regulate in any manner where the telephone line shall be constructed or where its poles on which its wires are strung shall be placed. Under the statutes of this State a telephone company is empowered to acquire the right to set its telephone poles by eminent domain or condemnation proceedings, and where the owner of the land does not agree with the telephone company that it may place its poles on his land, the telephone company must resort to condemnation proceedings. It is my opinion, however, that this must take place at the time the poles are originally placed. It seems, however, that this is a matter over which the parties should come to an amicable agreement. The Board, however, has no authority to act one way or another and is entirely without jurisdiction.

Dated November 12, 1914.

**IN THE MATTER OF THE FEDERAL WAR TAX UPON TELEPHONE
MESSAGES FOR WHICH THE CHARGE EXCEEDS FIFTEEN
CENTS.**

Complaint No. 2025.

Dated November 30, 1914.

**Interpretation of Statute Levying Tax upon Telephone Messages —
Board Without Jurisdiction to Relieve Telephone Companies
from Inconvenience of This Statute.**

OPINION OF COUNSEL FOR BOARD.

I have before me the letter from S. M. Booth, secretary of the Hermosa Telephone Company of Hermosa, South Dakota, in which he refers to the war revenue tax law recently

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passed by Congress levying a tax of 1 cent on telephone messages where the charge exceeds 15 cents. I have not a copy of the war revenue act before me and hence am unable to construe the statute but must rely on what information has been furnished through the newspapers and magazines. I have written to the revenue collector for copies of the law but thus far have not received them. My understanding of the statute is that the war tax is to be collected from the person sending the message, and that the telephone companies are holden to the government for complete returns of the war revenue tax thus collected from persons using their telephone lines. This additional tax will no doubt cause considerable trouble and inconvenience to telephone companies, but the Board of Railroad Commissioners has no jurisdiction over the matter and they must look to Congress for relief.

Dated November 30, 1914.

IN THE MATTER OF THE INVESTIGATION OF THE RATES, CHARGES AND PRACTICES OF THE FARNSWORTH AND CAVOUR TELEPHONE COMPANY, FARNSWORTH AND IROQUOIS TELEPHONE COMPANY, FARNSWORTH AND ESMOND TELEPHONE COMPANY, FARNSWORTH AND CARTHAGE TELEPHONE COMPANY, FARNSWORTH AND ARTESIAN TELEPHONE COMPANY, FARNSWORTH CO-OPERATIVE TELEPHONE COMPANY AND OTHER TELEPHONE COMPANIES OPERATING IN THE VICINITY OF FARNSWORTH.

F — 130.

Decided December 8, 1914.

Irregular Practices of Telephone Companies Investigated.

The Commission, on its own initiative, investigated the practices of certain telephone companies operating in and around Farnsworth, South Dakota.

Discrimination Between Stockholders and Non-Stockholders Prohibited.

Held: That the practice of favoring stockholders by charging them lower rates than non-stockholders is unjustly discriminatory and must be discontinued.

Stock Ownership as Condition Precedent to Service Condemned.

Held: That the ownership of stock may not be made a condition precedent to the right to receive telephone service, as it is the duty of telephone companies as common carriers to provide adequate service at reasonable rates to all who desire the same.

Rental Basis Ordered Substituted for Assessment Basis.

Held: That reasonable rates must be established for service and the collection of an assessment must be discontinued.

Company Ordered to Own Equipment.

Held: That every telephone company be required to purchase and own all of the equipment used in the conduct of its business.

Filing of Contracts Ordered.

Held: That all contracts in any way affecting the conduct of a telephone business must be in writing, and that copies of all such contracts must be filed with the Commission.

Creation of Depreciation Fund Ordered.

Held: That each of the companies in this case be required to create and maintain a depreciation fund, and set aside 6 per cent. to 8 per cent. annually as a reserve for depreciation.

Improvement in Care of Line Ordered.

Held: That each of the companies be required to give more attention to the maintenance of its respective lines, and that a more efficient method be adopted than that of permitting each subscriber to care for his own telephone and share of the line.

Transmission of Toll Messages Over Farm Lines Prohibited.

The several companies maintained a switch known as "Farnsworth switch," and were in the habit of sending messages from one town exchange over the farm lines and through the Farnsworth switch to another town exchange.

Held: That this was toll business and the practice should be discontinued.

Annual Reports Ordered.

Held: That it is the duty of telephone companies to file annual reports as required by statute.

Unit of Telephone Service Discussed.

Held: That intercommunication between subscribers within the unit constituted by the local exchange and the rural lines connected therewith on a switching basis is properly considered exchange business, and a

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rental or switching fee charge should include free service throughout the unit, but communication between two units or exchanges is properly considered as toll service.

Rates for Switching Farm Line Connected with Two Exchanges.

Held: That where there is a connection of one rural party line with two exchanges, the charge for switching should not be twice as great as for switching service where a farm line is connected with only one exchange, but should be on a graduated scale.

REPORT.

MURPHY, *Commissioner:*

The investigation in this proceeding was made by this Board of its own initiative following the receipt of a number of informal complaints to the effect that the rural line telephone companies doing business in the vicinity of Farnsworth were discriminating against persons who were not stockholders by charging them a rental rate and furnishing service to stockholders either free or on the assessment basis; that improper conditions existed with reference to the switching charges paid by these rural telephone lines; that in some cases part of the equipment was owned by the individual telephone user instead of by the company; and that there was much confusion, uncertainty and irregularity in the telephone operating conditions in that locality.

The Cavour Independent Telephone Company operates farm lines with 40 subscribers, 14 of them are on a short line running southwest from Cavour and 26 on a line running south from Cavour and having connection with a farm switch at Farnsworth. This so-called Farnsworth switch is owned, operated and maintained by seven farm line companies jointly, each paying \$39.00 per year to the party operating the switch. The evidence shows that this company is paying \$1.00 per year per 'phone for switching at Cavour and secures services at Yale, Esmond, Iroquois, Carthage, Forestburg, Artesian, Woonsocket and Alpena, although they have no switching arrangement with the exchanges at those towns. The record further shows that this company is furnishing service to non-stockholders

at a rental rate while making an assessment against its stockholders.

The Farnsworth-Iroquois Telephone Company is a mutual company operating a rural line $26\frac{1}{2}$ miles in a round-about way between the Farnsworth switch and Iroquois with 21 'phones installed. The evidence shows that this company in compliance with the law and the order of the Board has established a rental basis and charges new subscribers \$15.00 per 'phone for a year in advance and \$15.00 per 'phone per year quarterly in advance to all other subscribers. It also has purchased all of the equipment used and issued stock dividends in payment therefor. It pays a switching charge of \$3.00 per 'phone per year for switching at Iroquois, and is one of the companies paying \$39.00 for the expense of operating the so-called Farnsworth switch. The evidence also shows that about one-half of the subscribers on its line receive, and desire to continue to receive, service at Carthage and Artesian; in fact, the above indicated subscribers do most of their business at the latter named places. This situation is due to the fact that 10 or 11 subscribers on the south end of the Iroquois line are located much nearer to Carthage and Artesian than they are to Iroquois, notwithstanding the fact that they are between Iroquois and the switch, and the only way they can secure service at Carthage is through the Farnsworth switch and then over the Farnsworth-Carthage line to Carthage, and those desiring service at Artesian are routed through the Farnsworth switch and over the Farnsworth-Artesian line to Artesian. The evidence also shows that at least part of this line is in poor condition and that each subscriber is supposed to keep his 'phone and a certain share of the line in repair.

The Farnsworth-Esmond Telephone Company is an incorporated company operating 19 miles of rural line between Esmond and the Farnsworth switch. It has 20 subscribers and its policy has been to make an assessment of \$4.50 per year per 'phone. It has failed to file a schedule of rates and also any contracts and agreements which it

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may have with this Board. It is paying its pro rata share of \$39.00 per year for maintaining the Farnsworth switch and pays \$1.00 per year per 'phone for switching at Esmond. The evidence further shows that subscribers on this company's line can, and do, receive service with any and all of the town exchanges connected by the seven different companies' lines. It is the custom for each subscriber to maintain his own 'phone and share of the line.

The Farnsworth-Artesian Telephone Company is a mutual company with 20 subscribers. Each stockholder owns his own 'phone and subscribers not on the main line are required to build their own side lines. The company operates on the assessment basis and has not filed a schedule of rates with the Board. It is paying \$1.00 per year per 'phone for switching at Artesian and its proportionate share, \$39.00 per year to maintain the Farnsworth switch. Its contracts and agreements with other companies are not in writing and consequently are not filed with the Board. The evidence shows that some of its side lines are of fence construction and in poor condition.

The Farnsworth-Carthage Telephone Company owns and operates about 20 miles of farm line between the Farnsworth switch and Carthage. It has about 20 subscribers and pays \$3.00 per 'phone per year for switching at Carthage and \$39.00 per year to maintain the Farnsworth switch. Its rental rate to non-stockholders is \$12.00 a year, and stockholders for the past two years have been assessed \$8.00, which amount does not include the \$3.00 switching charge. The evidence shows that this line is in very poor condition and that the maintenance charge has increased rapidly the past few years. The condition of the line at the present time is so poor that the service is very far from being efficient. The company should be required to at once overhaul this line and make the necessary repairs and replacements to put the line in proper working order.

The Farmers Co-operative Telephone Company, heretofore called the Farnsworth Co-operative Telephone Company, is an incorporated farm line company owning farm

lines having connection with Artesian, Forestburg and Woonsocket and the switch at Farnsworth and has 87 subscribers. The record discloses that this company has recently reorganized, purchased all of the equipment, established a rental basis and has entered into switching contracts with the town exchanges with which it is connected and is paying switching charges therefor at each exchange. In fact, the evidence shows that it is making a splendid effort to get on a business basis and its officers are entitled to commendation.

The Cornell-Farnsworth Telephone Company owns and operates a farm line between Woonsocket and the Farnsworth switch. This company was not given specific notice in the hearing and was not represented. From its annual report, information is obtained that it is operating on the assessment basis; that the individual subscribers own part of the equipment; in fact, that its practices are very similar to the practices of the other companies parties to this hearing, consequently this decision and order should be considered effective in all its phases by it.

The Farnsworth switch, operated jointly by these different companies as stated above, is quite centrally located between the towns of Cavour, Iroquois, Esmond, Carthage, Artesian, Forestburg, Woonsocket and Alpena and costs \$273 per year to operate. Messages are routed through this switch not only from the subscribers of the different farm lines connected but also from subscribers of the different town exchanges, and the subscribers of the rural lines whether the line in question is on the switching basis or not. Further, it appears that messages originating at a town exchange are routed over these farm lines and through the Farnsworth switch and terminated at any of the other town exchanges mentioned without compensation. It was held in the general investigation, decided August 21, 1913,* that

"The intercommunication between subscribers of a local exchange and its connecting lines is properly considered as exchange business, whereas, when there is communication over a line between two exchanges or units,

* See Commission Leaflet No. 22, p. 974.

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this is properly considered as toll business. Toll business or toll messages should properly be transmitted over lines to which no other telephone instruments are attached. If these rules are observed, the distinction between toll business and exchange business is quite plain. The toll line was originally installed and adopted for the transmission of messages between points at some distance from each other, and if this same rule is applied, it will readily be seen that toll messages are those which are transmitted between telephone units or telephone exchanges."

It was further held in that decision that no telephone instruments whatever should be connected with lines over which messages between town exchanges are transmitted. In conformity with the rules laid down in that decision, these companies should be required to discontinue the practice of routing messages from an exchange point to a subscriber on these lines for which it is not paying switching charges, and also discontinue the practice of permitting the routing of messages between town exchanges through the Farnsworth switch.

I desire at this time to call the attention of the companies interested in the fact that they cannot, as a condition precedent to furnishing telephone service, insist that an intending patron shall purchase stock in the telephone company.

In connection with the filing of a schedule of rates of every kind and the filing of contracts and agreements, it may be said that some of these companies are operating under oral agreements and some of them apparently without any definite understanding as to their relations with other companies. Our statute requires that all rates of every kind and all contracts and agreements be filed in the office of the Board of Railroad Commissioners. If the contracts are to be filed as required by the statute then they must be in writing. It follows as a consequence that all agreements and contracts of every kind between telephone companies and every person, firm, corporation or municipality in any manner affecting the conduct of the telephone business must be in writing and filed. A failure to comply with the provisions of the section requiring these filings subjects any telephone company and any officer or agent of any telephone company violating, neglecting, failing or

refusing to make such filing to a fine of not less than \$200 nor more than \$1,000.

The attention of the companies is also called to the necessity of making and filing the annual report to be made out by them. This report should contain all of the information asked for by the Commission in the blanks furnished them therefor.

The Board has not laid down a general rule for the handling of a depreciation account except to recommend that all telephone companies should set aside a certain sum monthly or yearly for the purpose of taking care of depreciation. The companies here should be required to set aside not less than 6 per cent. nor more than 8 per cent. of the value of their plants for such purpose.

The system adopted by these companies of having a subscriber maintain his telephone and equipment is, to say the least, very ineffectual. It is our opinion that such a system does not work well in any place that it has been adopted, and we would suggest that these companies could get together and adopt some other method to take care of the lines. It would seem that if the service of some one person were secured and he was authorized by the different companies to take charge of the different lines and see that they were kept in proper repair it would be a step in the right direction.

Each of these companies that has not already done so should be required to establish a just and reasonable schedule of rates sufficiently high to pay all legitimate operating and maintenance charges including the amount recommended above to be set aside for depreciation and sufficient to pay a reasonable return to the stockholders on their investment. The said schedule of rates should also include a non-subscriber's message rate, if any is adopted.

On page 36 of the transcript, the representative of one of the companies requested a ruling upon the following statement of facts: That the subscribers on a rural line running south from Forestburg and having connection with that exchange on the 15 cents per 'phone per month basis

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claimed and secured the privilege of intercommunication with all subscribers of the different companies owning and operating the Farnsworth switch and with several other town exchanges without any compensation therefor. While this subject is decided earlier in this report, it is deemed wise to give it special attention here, and in this connection will say that the subscribers mentioned on the rural line south of Forestburg in paying the switching rate at that exchange are entitled to the local service of the Forestburg exchange which includes its town service and its rural line service on all rural lines owned by it or that are connected with it on the switching basis and no more. In other words, these subscribers on this line south of Forestburg are entitled to the service at Forestburg and on the rural line of the Farmers Co-operative Telephone Company as far as the Farnsworth switch, and are not entitled to service with the subscribers of the Cavour Independent Telephone Company; the Farnsworth and Iroquois Telephone Company, Farnsworth and Esmond Telephone Company, Farnsworth and Carthage Telephone Company, and the Farnsworth and Artesian Telephone Company nor the remainder of the subscribers of the Farmers Co-operative Telephone Company but are entitled to the service with those subscribers of any telephone line connected at Forestburg upon the switching basis.

On page 32 of the transcript it is stated that:

"At Farnsworth they have recently cut us off. The majority of our stockholders would be in favor of being cut off at Farnsworth in order to save the expense of the switch which is \$39.00 per annum besides the ownership of one-seventh of the switchboard at Farnsworth, as there are only two, or possibly three, parties that are benefited by this connection at Farnsworth. However, the majority of our stockholders would gladly agree to the connection at Farnsworth if those using it would pay for the service. In the decision from the Railroad Commission we would like to hear on that subject. Unless the parties using this switch pay for it, the majority of the subscribers on this line would prefer that the line remain disconnected as it is now."

In this connection a representative of the Farnsworth-Iroquois Telephone Company made the following statement:

"In regard to this Farnsworth switch, if it is disconnected or allowed to be disconnected, it will deprive a whole lot of us of our neighbors, and seriously impair the value of our holdings almost to the point of confiscation, and my opinion would be that an order should be issued ordering it to be continued."

From the record it appears to be a fact that on account of the location of several of the lines centering at Farnsworth many of their subscribers are unable to secure the desired service unless the switch at Farnsworth is maintained. While it is doubtless true that this condition is due to the fact of the faulty location of the different lines (inasmuch as the proper location or construction of lines would be that the different parties belonging in any trade territory of a given town would be on a line having direct connection with that town) it would require considerable expense to rearrange the lines and give the majority of the subscribers the best service at the least possible cost to them; if this were done the necessity for the Farnsworth switch would be removed and only a few of the subscribers of any line put to any serious inconvenience. At this time the matter of the readjustment of the lines or the continuing of them as they now are, including the connection at the Farnsworth switch, will be left to the companies to work out to their mutual advantage. But if the Farnsworth switch is continued and the subscribers, or even one-half of them, as is the case on the Farnsworth-Iroquois line, desire service at Carthage or Artesian, as the case may be, a switching arrangement should be entered into with the exchange or exchanges with which service is desired. This does not mean that if the subscribers of the Farnsworth and Iroquois Telephone Company decide to enter into switching arrangements with the exchange at Carthage that they pay \$6.00 a year for the privilege of having the two exchanges. As has been stated before they are now paying \$3.00 per year for switching at Iroquois; if they now secure the same privilege of interchanging messages with the exchange subscribers at Carthage, it is considered that this service would not be worth twice as much as the service that they are now

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getting at one exchange. In other words, the switching charge, where a line has direct connection or direct connection through a farm line switch with a second exchange, should be on a graduated scale. This Board in the *Montrose case** decided that, where a rural line had direct connection with two exchanges, the maximum rate should be 37½ cents per 'phone per month, this amount to be divided between the two contracting exchanges, and in other adjustments it has been held that where a line had direct connection with a second exchange through a switch that part of the 37½ cents maximum charge for the switching should be allowed for the maintenance and up-keep of the switch.

Another matter that was brought out at the hearing was the fact that on some of the lines the practice was indulged in of permitting the subscribers to own their own 'phones and in some cases the branch lines and other equipment. This is a bad practice and the companies parties to this hearing should be ordered to discontinue the practice and be required to purchase any equipment now in use on their line or lines, and in the future desist from either requiring or allowing a subscriber to own any part of the equipment.

ORDER.

In this cause the Commission having made and filed its decision containing its findings of fact and conclusions

It is, therefore, ordered, considered and adjudged, That the telephone companies involved in this proceeding cease and desist from the practice of discriminating between those subscribers who are stockholders and those subscribers who are not stockholders by charging a different rate to those who are not stockholders than to stockholders, and that from and after the service of this order each of said telephone companies charge to its stockholder subscribers the same and identical telephone rentals and rates which are charged to subscribers who are not stockholders.

* See Commission Leaflet No. 31, p. 101.

It is further ordered, considered and adjudged, That each of the telephone companies parties to this proceeding cease and desist from charging and collecting an assessment for the payment for telephone service, and further that each of said companies be, and hereby is, required and commanded to establish a just and reasonable schedule of yearly rental rates and a non-subscriber rate for local service, if any is adopted, and that said schedule of rates be filed with this Board within thirty days from the date of service hereof. Said rental rates should be sufficiently high to pay all legitimate operating and maintenance charges and set aside not less than 6 per cent., nor more than 8 per cent., of the value of its property to take care of depreciation—the treatment of, and the amount in, the depreciation fund to be reported to the Commission in the annual report of said company—and to allow the stockholder a fair return on his investment.

It is further ordered, considered and adjudged, That each of the companies parties to this proceeding be required and commanded to purchase and own all of the equipment used in the conduct of its business.

It is further ordered, That these companies jointly owning and operating the Farnsworth switch desist from routing messages between exchanges through said switch.

It is further ordered, That each of the companies in this proceeding be, and hereby is, required and commanded to enter into a written contract or agreement with each and every company with which it has connection and that a certified copy of said contracts and agreements be, within thirty days of the date of service hereof, filed with the Board of Railroad Commissioners as provided by law.

It is further ordered, That each of the companies herein be, and hereby is, required to give more attention to the maintenance and up-keep of its respective lines, and that a more efficient method be adopted than that of permitting each subscriber to care for his own 'phone and share of the line.

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It is further ordered, That each of the companies to this proceeding be, and hereby is, required to create and maintain a depreciation fund along the lines expressed in the report.

It is further ordered, That each of the companies herein be, and hereby is, required to advise this Commission immediately upon the compliance with each of the terms and conditions herein contained.

It is further ordered, That the Cornell-Farnsworth Telephone Company, while not having had specific notice of this hearing, shall comply with the provisions of this decision and order in all things and further shall notify this Commission of its compliance within sixty days, otherwise the matter will be set down for hearing.

Done in regular session in the city of Pierre, the Capital on this eighth day of December, A. D., 1914.

CENTERVILLE TELEPHONE COMPANY v. J. E. HEISLER.

F — 163.

Dated December 26, 1914.

**Disconnection of Extension Set Connected with Pay Station Advised —
Installation of Business Telephone at Regular Business Rate
Recommended.**

J. E. Heisler, of Centerville, by means of a privately owned extension set connected with the pay station of the Northwestern Telephone Company installed in his drug store, was able to obtain local telephone service through the exchange of the Centerville Telephone Company free of charge, and if so inclined, would be able to "listen in" on all calls sent from the pay station.

Held: That the extension set should be disconnected and that said Heisler should be furnished a business telephone at the regular business rate by the Centerville Telephone Company, as in this way the discrimination in favor of said Heisler would be removed, as would the temptation to "listen in" on messages sent to or from the pay station.

OPINION OF COUNSEL FOR BOARD.

I have before me the stipulation of facts between the Centerville Telephone Company and Mr. J. E. Heisler, of Centerville.

While the stipulation does not expressly state that Mr. Heisler is not a subscriber of either of the telephone companies at Centerville, it must be presumed for the purposes of this opinion that he is not a subscriber to either telephone company, and in particular is not a subscriber of the Centerville Telephone Company which seems to be the company immediately concerned. From the stipulation it appears that the Centerville Telephone Company maintains and operates a telephone system and exchange at Centerville and has long distance toll connection with the Northwestern Telephone Company which also has a public pay station in a booth installed in Mr. Heisler's drug store, and that Mr. Heisler, by the use of a privately owned ringing and talking extension set which is connected with the pay station in the booth of the Northwestern Telephone Company in his drug store, is able to obtain local telephone service through the exchange of the Centerville Telephone Company free of charge, and, if so inclined, would also be able to listen to all toll messages sent from the toll station established in his store.

We relieve Mr. Heisler of any imputation of "listening in" on toll messages, but the style of the installation of his extension set appears to be such as to afford the opportunity. Mr. Heisler, under these circumstances is obtaining the same service from the Centerville Telephone Company as is furnished by it to its other business patrons or patrons renting business telephones from that company, and he should pay to the Centerville Telephone Company the same rates as are paid to it by other patrons in the city of Centerville renting its business telephone instruments. Likewise, the installation of his privately owned ringing and talking extension bell set should be disconnected from the pay station of the Northwestern Telephone Company in his drug store, and the Centerville Telephone Company should in-

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stall in his store for his use, the same type of telephone instrument and installation as it provides for its other patrons renting business telephone service from it.

A copy of this letter should be sent to the Northwestern Telephone Company in order that it may know the reason why Mr. Heisler's extension set should be disconnected from its telephone booth. The transmission of toll messages, and in fact all telephone messages, should be as private as the art will permit, and no extension set should be connected with a pay station or long distance toll line, for while the desire may not be present, the opportunity is thus afforded for listening in on toll messages, a practice which should not be permitted.

Dated December 26, 1914.

IN THE MATTER OF THE INVESTIGATION INTO THE RATES AND CHARGES MADE BY AND PRACTICES OF THE HIGHLAND TELEPHONE COMPANY, BRADLEY-CROCKER TELEPHONE COMPANY, WALLACE FARMERS TELEPHONE COMPANY, YORK-TROY TELEPHONE COMPANY, CONDE TELEPHONE COMPANY, LILY LOCAL TELEPHONE COMPANY, BUTLER TELEPHONE COMPANY, OLEAN TELEPHONE COMPANY, BENTON TELEPHONE COMPANY AND LILY-LOUNSBURY TELEPHONE COMPANY.

F — 100.

Decided February 23, 1915.

Irregular Practices of Telephone Companies Investigated.

The Commission on its own initiative investigated the practices of the telephone companies mentioned in the caption.

Discrimination Between Stockholders and Non-stockholders Ordered Eliminated.

Held: That the practice of favoring stockholders by charging them lower rates than the non-stockholders is unjustly discriminatory and contrary to law.

Filing of Contracts Ordered.

Held: That all contracts in any way affecting the conduct of the telephone business must be in writing and that copies of such contracts and of all rates, franchises and ordinances must be filed with the Commission.

Prompt Collection of Bills Ordered.

Held: That prompt payment should be insisted upon and that where a subscriber fails or refuses to pay his rental promptly, and in accordance with the rules of the company, he should be refused service until such time as proper guaranties were made that all future bills would be paid. In connection with the collection of past due rentals the company's recourse would be an action in court to recover the amount due.

Free Telephones in Railroad Stations Forbidden.

Held: That the furnishing of free telephones in railroad stations is prohibited by the anti-pass law and by the telephone law, and must be discontinued.

Discontinuance of Terminal Fees Ordered.

Held: That the imposition of a charge for the delivery of toll messages to a rural line, in addition to the regular toll rate, constitutes a violation of the statute which provides that all terminal fees on incoming and outgoing messages shall be uniform and shall not exceed 5 cents per message for the originating exchange and 5 cents per message for the terminating exchange; that the local exchange with the rural lines connected thereto, whether owned by or merely switched thereby, constitute a single unit for telephone service, and that no extra terminal fee on incoming or outgoing messages should be charged subscribers within these limits.

Compliance with Statutory Switching Fees Ordered.

Held: That telephone companies must comply with the section of the statute which provides that the maximum charge for switching rural lines shall be 25 cents per month per telephone, and must discontinue the practice of charging a flat rate for service to rural companies regardless of the number of telephones connected.

Stock Ownership as Condition Precedent to Service Condemned.

Held: That the ownership of stock may not be made a condition precedent to the right to receive telephone service, as it is the duty of telephone companies as common carriers to provide adequate service at reasonable rates to all who desire the same.

Discontinuance of Free Service Advised.

Held: That free interchange of service creates a congested condition causing the service to lose in efficiency; that it is a discrimination for a telephone company to grant free interchange of service to one company

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and require another company to pay a charge therefor; that the telephone company that is responsible for the switching should pay at least the actual cost of such switching.

Filing of Annual Reports Ordered.

Held: That the filing of annual reports is required by statute and that a penalty attaches for failure to comply with this requirement.

Company Owning Lines Switched Responsible for Payment of Tolls and Switching Charges.

Held: That it is reasonable to hold the company owning the line switched for the payment of all toll messages and switching charges, inasmuch as it would be an undue burden upon the exchange to require it to make collections from individuals over whom it had no control.

Reserve for Depreciation Suggested.

Held: That it is good business policy for a company to set aside from its earnings annually a reasonable percentage of the value of its plant to care for the item of depreciation, otherwise at the time the actual replacement of plant is found necessary it will be a severe burden upon the investor and the public will also suffer as the company will not be in a position to give efficient service.

Ownership of All Equipment Directed.

Held: That each company be required to purchase and own all of the equipment used in the conduct of its business.

FINDINGS OF FACT AND CONCLUSIONS.

The investigation in this proceeding was made by this Board on its own initiative after considerable correspondence had been had relative to the rates charged by, and the practices indulged in by these telephone companies. Being unable to arrive at a satisfactory adjustment by correspondence, the matter was set down for hearing, and a hearing held in the city of Bradley, in the County of Clark, State of South Dakota, on the twenty-third day of April, 1914, before Commissioners F. C. Robinson and W. G. Smith, at which time and place the following appearances were made:

Highland Telephone Company by *J. D. Hutchinson*, president, *C. C. Hutchinson*, manager.

Bradley-Crocker Telephone Company by *C. M. Namara*,

president and manager, and *D. E. Wadleigh*, vice-president.

Wallace Farmers Telephone Company by *M. B. Peterson*, president, and *Peter Burg*, vice-president.

York-Troy Telephone Company, by *August Knebel*, secretary.

Conde Telephone Company by *Charles Conklin*, treasurer.

Lily Local Telephone Company by *Oliver Larson*, secretary and manager.

Butler Telephone Company by *C. C. Wade*, secretary.

Olean Telephone Company by *T. A. Hersey*, president, and *W. A. Taylor*, secretary.

Lily-Lounsbury Telephone Company by *T. E. Sveum*, president, and *John C. Lee*, secretary.

The record discloses that the Butler Telephone Company is an incorporated company with a capital stock of \$10,000, and operates an exchange at Butler and rural lines radiating therefrom; that the Lily Local Telephone Company is incorporated with a capital stock of \$3,000, and operates a small exchange at Lily, and one short farm line; that the York-Troy Telephone Company is incorporated with a capital stock of \$3,500 and operates rural party lines only; that the Highland Telephone Company is incorporated with a capital stock of \$20,000, and operates an exchange at Crandall and rural lines connecting with the exchanges at Conde and Verdon; that the Bradley-Crocker Telephone Company is incorporated with a capital stock of \$25,000, and operates an exchange at Crocker and rural lines connected therewith; that the Wallace Farmers Telephone Company is incorporated with a capital stock of \$6,000 and operates a local exchange at Wallace and rural lines in the vicinity thereof; that the Vivian-Wallace Telephone Company is incorporated with a capital stock of \$1,500, and operates rural lines in the vicinity of Lily, and connected with the exchanges at Lily and Wallace; that the Olean Telephone Company is incorporated with a capital stock of \$10,000 and operates an exchange at Turton and rural

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lines connecting with Conde, Doland, and Crandall; that the Conde Telephone Company is incorporated with a capital stock of \$25,000, and operates an exchange at Conde and rural lines radiating therefrom.

It is also a matter of record that some of these companies, particularly the Bradley-Crocker, the York-Troy, the Wallace Farmers, and the Vivian-Wallace, have been charging a different rate to non-stockholder subscribers than to their stockholder subscribers. In other words, the practice has been indulged in of charging a non-stockholder subscriber a monthly or yearly rental rate, while the stockholders have been permitted to pay an assessment at the end of the year.

It is also a matter of record that the Butler Telephone Company, Bradley-Crocker Telephone Company, York-Troy Telephone Company, Wallace Farmers Telephone Company, the Vivian-Wallace Telephone Company, and the Olean Telephone Company have failed to enter into written contracts with connecting companies, and consequently have failed to file certified copies of such contracts or agreements with the Board of Railroad Commissioners. It appears in evidence that the Butler Telephone Company has failed to collect its rental charges promptly; in fact, their books show that some individual subscribers are in arrears as much as \$80.00.

The record shows that the Lily Local Telephone Company, the Highland Telephone Company, and the Wallace Farmers Telephone Company are maintaining and operating free telephones in depots.

It appears from the record that the Lily Local, the Wallace Farmers, and the Vivian-Wallace Telephone Companies, are imposing the other line charge for the delivery of toll messages on rural lines.

It also appears that the switching rate for rural lines existing between the Lily Local Telephone Company and the York-Troy Telephone Company is on the basis of 35 cents per month per 'phone where said rate is not paid in advance. It also appears that several of the companies parties to this case are on a flat amount per line basis for

switching of rural party lines, instead of so much per month per 'phone.

It is also a matter of record that the York-Troy Telephone Company and the Vivian-Wallace Telephone Company require an intending subscriber to purchase stock before receiving service.

It also appears from the record that the Bradley-Crocker Telephone Company, the York-Troy Telephone Company, the Wallace Farmers Telephone Company, and the Vivian-Wallace Telephone Company permit the practice of the individual stockholders to own a part of the equipment.

It is also a matter of record that the compensation paid to the Conde Telephone Company and the Olean Telephone Company for originating and terminating toll messages, is on the flat basis of so much per month or per year instead of the 5 cents per message in and out, as provided by law.

The evidence further discloses that the Bradley-Crocker Telephone Company, the Lily Local Telephone Company, the York-Troy Telephone Company, the Wallace Farmers Telephone Company, the Garden City Telephone Company, and the Conde Telephone Company, and in fact nearly all of these telephone companies have connections with other exchanges or lines for which a flat rate of so much per line is being imposed for switching, or the arrangement is on a free interchange basis.

It is also a matter of record that some of these companies have failed to make report to the Board as required.

The evidence also discloses that some of the rural lines that have switching arrangements with the town exchanges refused to be responsible for the charges accruing to subscribers on their lines; in other words, compel the town exchange company to collect the individual accounts of the connecting companies' subscribers.

Taking these matters up in the order in which they were considered in the findings, the different companies interested should be required to discontinue the practice of charging a different rate to stockholders than to non-stockholders. Each of these companies having received

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copies of the decisions in regard to this matter, and having full knowledge that the practice of favoring stockholders, either in the payment of charges, or in any rule, regulation or service extended to them by the company is unlawful and constitutes unjust discrimination under the Act, and was so held in the general investigation decided August 21, 1913,* in which this Commission held that this practice was clearly violative of the provisions of Section 10, Chapter 289 of the Laws of 1909 as amended by Chapter 218 of the Laws of 1911, and that any person or telephone company, and any officer or agent of any telephone company violating the provisions of that section are subject upon conviction to a fine of not to exceed \$200, it will be necessary for these companies to establish a regular schedule of rental rates and charges, incorporating therein, any rules or conditions that they may impose. This schedule of rates should be filed with the Commission, and the charges, terms and conditions therein specified should apply to each and every subscriber of the company alike, regardless of whether said subscriber is a stockholder or not.

In connection with the failure of certain companies to file contracts with the Commission, it will be considered sufficient to quote Section 5 of the decision in the general investigation in which it was held that:

"Our statute requires all rates of every kind, and all contracts, agreements and franchises to be filed in the office of the Board of Railroad Commissioners. If the contracts are to be filed as required by the statute, then they must be in writing, or it will be impossible to file them. It follows as a consequence that all agreements and contracts of every kind between telephone companies and every person, firm or corporation, or a municipality in any manner affecting the conduct of the telephone business must be in writing and filed."

The companies parties to this case will be required to put all contracts and agreements affecting telephone service of any and every company into writing, and to file certified copies of such contracts and agreements, as well as copies

* See Commission Leaflet No. 22, p. 974.

of all schedules of rates and all franchises and ordinances with the Secretary of the Commission.

In regard to the Butler Telephone Company, or any other telephone company permitting its rentals or charges to become past due and run for an indefinitely long period, it is, to say the least, poor business practice, and the policy should be discontinued. It costs a telephone company money to maintain and operate its plant, and all subscribers should pay their rentals promptly, and in fact, a reasonable advance payment is considered good practice. No subscriber should be allowed to become in arrears to any such extent as it appears the Butler Telephone Company allowed some of its subscribers to do. Prompt payment should be insisted upon, and where a subscriber fails or refuses to pay his rental promptly and in accordance with the rules of the company, he should be refused service until such time as proper guarantees were made that all future bills would be paid; and in connection with the collection of past due rentals, the company's recourse would be an action in court to recover the amount due.

Those companies having installed telephones in depots, for which they are receiving no compensation, should desist from this practice for the reason that it is unlawful to extend service to one party on a different basis than the service rendered to anyone else. This practice is illegal and contrary to the provisions of the anti-pass law of this State which absolutely prohibits the furnishing of free telephone instruments or free telephone service. As was held in the general investigation decided August 21, 1913,* a copy of which decision was served upon the interested companies here, that:

"While it is true that it would be an accommodation to the public to be permitted to telephone to the stations inquiring about the arrival and departure of trains and the arrival of freight and cars, it is also true, that our statute forbids the furnishing of this service free of charge to the railroad company and its employees, and as a consequence, the same rates must be charged the railroad companies and their employees as to other subscribers for the same class of service."

* See Commission Leaflet No. 22, p. 974.

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Those companies that are permitting or exacting an added charge for the delivery of toll messages to a rural line, which in effect, makes a different rate for a message in one direction than in the other, should discontinue this practice immediately. Section 6 of the Telephone Law provides that all terminal fees for incoming and outgoing toll messages shall not exceed 5 cents for any message originating or terminating in South Dakota, unless otherwise ordered by the Board of Railroad Commissioners. Up to this time no order has ever been issued by the Board disturbing the 5 cents terminal fee fixed by law. The 5 cents terminal fee on incoming and outgoing toll messages having been fixed by the Legislature is presumed to be reasonable, and to afford compensation for all of the services in connection with the toll message, both in the originating and in the terminating exchange, as well as for the service to deliver a toll message over a rural line which is connected with a local exchange, whether that rural line be owned and operated by the local exchange or connected with it on a switching basis. It has been held in former cases that the town exchange, together with rural lines owned and operated by it, or rural lines connecting with it on a switching basis, constitutes an exchange or unit for telephone service, and that in the delivery or transmission of toll messages the 5 cents terminal fee on all incoming and outgoing toll messages applies as a compensation for all of the service rendered at either unit. In other words, the exchange at the point where the message originates should have for its services 5 cents, and for the service of delivering the message at the exchange where it terminates there should be a compensation of 5 cents and no more. In this connection the attention of the companies is directed to Section 13 of the Telephone Law which prescribes a penalty for the violation of the provisions of the Act, where no other penalty is provided, and which reads as follows, to wit:

“Every owner or operator of a telephone line, and any officer or agent or any telephone company as defined in Section 1 of this Act, who shall violate, neglect, fail or refuse to comply with any provision of this Act,

or who shall violate, neglect, fail or refuse to comply with any lawful order, rule or regulation of the Board of Railroad Commissioners of this State, shall upon conviction thereof, be punished by a fine of not less than two hundred dollars (\$200) nor more than one thousand dollars (\$1,000) in the discretion of the court."

The arrangement made between the Lily Local Telephone Company and the York-Troy Telephone Company whereby it is provided that 35 cents per month per 'phone is to be paid for switching rural party lines, must be changed and a contract entered into establishing a switching rate not in excess of 25 cents per month per 'phone for each 'phone on any given party line for the reason that the law expressly fixes the maximum charge that may be made for party line switching in this State at 25 cents per month for each telephone instrument.

The policy of permitting individual subscribers or stockholders to own any part of the equipment going into the construction of a telephone plant is contrary to telephone practice for the reason that it makes it impossible for the company to properly maintain, operate or police its lines; in fact, often creates dissension and tends to create discrimination in the practices of the company. The companies indulging in this practice will be required to discontinue same and the method employed by other companies where a like order has been issued, has been to purchase the equipment from the individual at what it is worth and rearrange their stock issues on the basis of the new investment.

Another policy that has been condemned is that of a company requiring an intending subscriber to purchase stock before he would be given service. Many people living in the territory covered by a telephone company might desire telephone service, and not be in a position to purchase stock, and this is considered a requirement that is unnecessary, impractical, and that it works a hardship on the public. In other words, when a company undertakes to give telephone service in a given territory, it should provide that service at reasonable rates to whomsoever desires

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same. By this it is not meant that a company would be compelled to build an unreasonable distance in order to give a party telephone service. What would be considered a reasonable distance would depend upon the facts in each case and what might be a reasonable distance in one case would not necessarily be a reasonable distance in all cases.

In regard to those telephone companies that are now paying the long distance telephone company on the basis of so much per month for originating and terminating messages, including possibly some other service such as switching rural lines, rent of poles, etc., [the practice] should be discontinued and contracts entered into for each service rendered, the law having fixed the maximum compensation for switching of rural lines at not to exceed 25 cents per 'phone and the terminal charges for originating or terminating long distance calls at 5 cents per message. Where the compensation for this service is fixed in a flat sum, it is impossible to determine whether the compensation is not more than the maximum allowed by law and consequently illegal, so the companies will be required to enter into contracts stating in detail the terms and conditions that apply to each class of service for which compensation is paid or received. The basis adopted by many, if not all of the telephone companies in this proceeding, is improper and illegal inasmuch as they have fixed and established a flat rate of so much per month or year per line instead of complying with the provisions of the law which requires that the charge for switching of rural party lines shall not exceed 25 cents per month per 'phone.

Another matter that should receive the attention of the companies interested is the practice of granting free interchange of service with different companies. While it is true that there no doubt is some benefit to be derived from an extended opportunity to converse over a considerable territory by means of rural lines, it is a fact, nevertheless, that where this practice is indulged in to too great an extent, it creates such a congested condition that the service loses in efficiency, and in fact, it becomes impossible, or

nearly so, for anyone to get the service that they are entitled to; and further it is a discrimination for a telephone company to grant free interchange of service with one telephone company and require another telephone company to pay a charge therefor. Switching for telephone lines or companies costs money, and the telephone line or company that is responsible for the switching should be the party to pay for same. In other words, the subscribers of the rural line who receive switching service over an exchange should be required to pay at least the actual cost of such switching, and in no case should this amount exceed 25 cents per month per 'phone.

The cost of operating a telephone system must necessarily be paid by the public and if the cost of switching rural line 'phones is not borne by the subscribers getting the service, necessarily the rental rates of the town subscriber will be increased to the extent of the cost of doing this rural party line switching.

Some of the companies having failed to report to this Commission, they are hereby admonished that the law requires reports to be made in conformity with the rules and regulations prescribed by the Commission and that a penalty attaches for the failure to comply in full in this regard.

The question has been raised by the evidence as to who should be responsible for the payment of toll messages and for the payment of switching charges on lines switched at an exchange. It has been held in other cases before the Commission that the company owning the line should be responsible to the exchange company for the amount of all toll messages and switching fees that may accrue to subscribers on its lines. This is considered a reasonable rule and any other arrangement places an undue burden on the exchange, and in fact, would require them to make collections from individuals over whom they had no control. In other words, the owner of the line should be responsible to the exchange for all telephone bills run by its subscribers as it is in position to refuse them service unless bills are paid.

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It appears that none of the companies in this proceeding have been in the practice of setting aside anything to take care of depreciation. This is a matter that does not require any extended discussion as it is admitted by all practical telephone men that it is necessary and good business policy for a company to set aside out of its earnings a reasonable percentage of the value of its plant to take care of the item of depreciation. While this item does not show up to its full extent until a late period in its life, it is, nevertheless, a fact that it is taking place all of the time and should be provided for during each and every year in the life of the plant; otherwise, at the time that the actual replacement of the plant is found necessary, it will be a severe burden upon the investor, and generally the public also suffers as the company is not in a position to give efficient service.

ORDER.

In this cause the Commission having made and filed its decision containing its findings of fact and conclusions,

It is, therefore, ordered, considered and adjudged, That the telephone companies involved in this proceeding cease and desist from the practice of discriminating between those subscribers who are stockholders and those subscribers who are not stockholders, by charging a different rate to those who are not stockholders than to stockholders, and that from and after the service of this order, each of said telephone companies charge to its stockholder subscribers the same and identical telephone rental and rates which are charged to subscribers who are not stockholders.

It is further ordered, considered and adjudged, That each of the telephone companies parties to this proceeding cease and desist from charging and collecting an assessment for the payment for telephone service, and further that each of said companies be, and hereby is, required and commanded to establish a just and reasonable schedule of yearly rental rates, and a non-subscriber rate for local service, if any is adopted, and that said schedule of rates be filed with this Board within thirty days from the date of

service hereof; said rental rates should be sufficiently high to pay all legitimate operating and maintenance charges, and set aside not less than 6 per cent., nor more than 8 per cent., of the value of its property to take care of depreciation (the treatment of and the amount in the depreciation fund to be reported to the Commission in the annual report of said company), and to allow the stockholder a fair return on his investment.

It is further ordered, That each of the companies herein be, and hereby is, required and directed to enter into contracts or agreements in writing with all other companies with which it is connected on a switching basis, or in any manner whatsoever affecting telephone service, or the rates therefor; and to file with the Secretary of the Commission within thirty days certified copies of such contracts or agreements; and further, each of said companies is required and commanded to file with the Secretary of the Commission within thirty days, certified copies of all franchises and ordinances operated under by it.

It is further ordered, considered and adjudged, That each of the telephone companies parties to this proceeding that have or are now granting free telephones or free telephone service in depots, cease and desist from the practice, and that service be given to the railway company at the same rates and under the same terms and conditions as apply to other business 'phones.

It is further ordered, considered and adjudged, That each of the telephone companies parties to this proceeding that have in the past or that are now permitting or requiring the collection of an added line charge for the delivery of toll messages over rural lines, cease and desist from the practice, and that from and after the service of this order, each of said telephone companies discontinue the making of an added charge for the delivery of toll messages on a rural line.

It is further ordered, That the companies making a charge for rural party line switching in excess of 25 cents

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per month per 'phone, cease and desist from this practice, and from the date of service of this order, enter into contracts which prescribe a rate that will not exceed 25 cents per month per 'phone.

It is further ordered, That those companies that are now on a flat basis of so much per month or year per line, cease and desist from using this method of contracting for switching rural party lines, and that the companies interested enter into contracts covering this switching on a basis of not to exceed 25 cents per month per 'phone.

It is further ordered, considered and adjudged, That each of the companies parties to this proceeding be required and commanded to purchase and own all of the equipment used in the conduct of its business.

It is further ordered, and the interested companies are hereby directed and commanded, To cease and desist from the practice of requiring intending subscribers to purchase stock before receiving telephone service.

It is further ordered, That exchange companies who are now receiving a flat rate per month for originating and terminating toll messages proceed immediately upon the service of this order to enter into contracts with the long distance companies on the legal basis of 5 cents on each incoming and outgoing toll message, and where some other service than that of originating or terminating toll messages is included in the present contract, separate contracts should be entered into covering these items.

Done in regular session at the city of Pierre, the Capital, on this twenty-third day of February, 1915.

IN THE MATTER OF THE APPLICATION OF THE PUKWANA TELEPHONE COMPANY FOR AUTHORITY TO INCREASE RATES.

F — 178.

Decided February 24, 1915.

Rates for Exchange and Rural Service Approved — Requirement of Advance Payment Approved — Discount for Yearly or Half-yearly Advance Payment of Rural Line Charges Approved — Penalty for Delayed Payment Approved.

Application was made to put in effect the following rates: For business telephones \$2.00 per month; for residence telephones \$1.50 per month; for business and residence telephones on one line \$3.00 per month; for rural line telephones \$17.00 per year if paid six months or yearly in advance, or \$1.50 per month in advance with a penalty of 10 cents per month if not paid within 10 days from the due date.

Held: That the application should be approved in so far as to fix the rental rates for business telephones and residence telephones and the rural line rates, and the terms in connection with the collection thereof.

Discontinuance of "Combination Rates" Ordered.

Held: That the practice of charging a subscriber having a residence and a business telephone on the same line a rate lower than the sum of the regular residence and business telephone rates is unjustly discriminatory and should be discontinued.

Filing of Contracts Ordered.

Several rural farm lines owned by the Nebraska Telephone Company and other farm lines known as the Buffalo County Lines had been interchanging service with the Pukwana company. Contracts for this service had not been entered into in writing, and consequently certified copies thereof had never been filed with the Board.

Ordered, That the Pukwana Telephone Company file with the Board certified copies of contracts or agreements covering the switching connections with the Nebraska Telephone Company and the so-called Buffalo County Telephone Lines.

FINDINGS OF FACT AND CONCLUSIONS.

The Pukwana Telephone Company having filed an application asking that certain changes be authorized in its schedule of rates, the matter was set down for hearing in the office of the Pukwana Telephone Company at Pukwana,

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Brule County, South Dakota, on Wednesday, the tenth day of February, 1915. The hearing was held before Commissioner Murphy. The applicant was represented by *J. A. Stransky*, owner and manager of the Pukwana Telephone Company, and the subscribers of the Pukwana Telephone Company were represented by *Albert Wodraska*, *W. G. Cluttler*, *Ernest Springer*, and *L. V. Ander*. Many other rural subscribers of the Pukwana Telephone Company were present.

The record shows that the Pukwana Telephone Company is owned and managed by *J. A. Stransky* of Pukwana, South Dakota. The exchange consists of fourteen business 'phones, twenty-three residence subscribers, and one hundred seventy-five rural line subscribers; that connected with the exchange are two rural lines belonging to the Nebraska Telephone Company, on one of which there are fourteen subscribers, and on the other twelve subscribers; that the Buffalo County Telephone Company's lines are connected with the Pukwana exchange through a farm switch and over one of the Pukwana Telephone Company's rural lines. The evidence is not clear as to the number of subscribers of the Buffalo County lines that have the privilege of interchange of messages through this connection, but the evidence of Mr. Stransky indicates that there are in the neighborhood of eighty to one hundred 'phones connected in this manner.

The evidence further shows that the subscribers on the Nebraska Telephone Company's lines mentioned, and the subscribers on the Buffalo County lines have so-called free interchange of service with the subscribers of the Pukwana exchange; and further that contracts have not been entered into, and certified copies thereof filed with the Board as required by law.

In the company's application it is disclosed, and the record shows, that the company's schedule of rates for exchange and rural line service is as follows:

Business telephones	\$2 00 per month
Residence telephones	1 50 per month
Business and residence telephones on one line....	3 00 per month
(Payable at end of each month.)	
Rural telephones	18 00 per year
(Payable in advance.)	

In the company's application authority is requested to put into effect the following schedule of rates:

Business telephones	\$2 00 per month
Residence telephones	1 50 per month
Business and residence telephones on one line....	3 00 per month
Rural telephones	17 00 per year
(Payable yearly in advance.)	
Rural telephones	8 50 per half year
(Payable semi-annually in advance.)	
Rural telephones	1 50 per month
(Payable monthly in advance.)	
(Penalty of 10 cents per month if not paid within ten days after due.)	

One of the reasons advanced by Mr. Stransky for his request that payments of rental rates be made in advance was to the effect that he was put to great expense in the matter of making collections, and also to serious loss by reason of poor accounts. In other words, people renting farms often moved after having received several months' service, and he was unable to locate the parties, and oftentimes, if located, it was impossible to force collection, and the theory upon which he based his application for change of rules in connection with the collection of telephone rentals was largely due to his belief that if an intending telephone subscriber was required to pay reasonably in advance, the cost of collection would be reduced and incidentally the loss from bad accounts would be materially lessened. The subscribers appearing at the hearing, as well as those parties representing the different lines and that gave testimony, expressed themselves as being well pleased with the proposed changes and apparently considered the proposed schedule particularly in regard to the requirements as to

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advance payments, as being very reasonable, and their testimony indicates that it is their opinion that no serious objection would be made by any of the subscribers of the Pukwana Telephone Company.

The item in the existing schedule of rates of the Pukwana exchange wherein it is provided that a subscriber of the telephone company having a residence and business 'phone on one line, and paying therefor \$3.00 per month instead of the full and regular business and rental rate, is subject to condemnation and will be considered in this discussion. It appears to the Commission and has been so decided in other and similar cases to be a discrimination, and it is our opinion that the practice should be discontinued. Under the present practice of telephone companies, as well as the practice outlined by different Commissions having jurisdiction over the telephone business, it is considered that the use to which a 'phone is devoted determines its classification, and the anti-discriminatory law provides absolutely that a telephone company shall not discriminate as between individuals or companies in any manner whatsoever as to the rates charged for a particular class of service.

With reference to the connection of rural farm lines owned by the Nebraska Telephone Company and the rural farm lines known as the Buffalo County lines, that are now and have been in the past upon a free interchange basis, and contracts not having been entered into in writing, and certified copies thereof not having been filed with the Board, the Pukwana Telephone Company is admonished to submit to the Commission copies of agreements or contracts covering the switching arrangements that are to exist between these companies within thirty days from the service of this decision and order.

From the above statement of facts, it is our conclusion that the application of the Pukwana Telephone Company should be approved insofar as to fix the rental rates for business 'phones and residence 'phones of the town exchange and the rural line rates, and the terms in connection

with the collection thereof, and that the company be authorized to file with the Commission and collect from its subscribers, the following schedule of rates:

Business telephones	\$2 00 per month
Residence telephones	1 50 per month
Rural telephones	17 00 per year
(Payable yearly in advance.)	
Rural telephones	8 50 per half year
(Payable semi-annually in advance.)	
Rural telephones	1 50 per month
(Payable monthly in advance.)	
(Penalty of 10 cents per month if not paid within ten days after due.)	

ORDER.

In this case the Board having made and filed its findings of fact and conclusions of law, and being fully advised in the premises;

It is, therefore, ordered, That the Pukwana Telephone Company cease and desist from its practice of charging a less rate to a subscriber having a business and residence 'phone on one line than the sum of its regular business and residence rate; and

It is further ordered, That the Pukwana Telephone Company within thirty days of the service of this order cause to be filed with the Board of Railroad Commissioners, certified copies of contracts or agreements covering switching connections with the Nebraska Telephone Company and the so-called Buffalo County Telephone lines, said contracts to give in detail the service covered and the conditions applying thereto.

It is further ordered, considered and adjudged, That the application of the Pukwana Telephone Company to change its schedule of rural line rates be granted, and authority is given the said Pukwana Telephone Company to charge, collect and receive the following schedule of telephone rental charges:

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Business telephones	\$2 00 per month
Residence telephones	1 50 per month
Rural telephones	17 00 per year
(Payable yearly in advance.)	
Rural telephones	8 50 per half year
(Payable semi-annually in advance.)	
Rural telephones	1 50 per month
(Payable monthly in advance.)	
(Penalty of 10 cents per month if not paid within ten days after due.)	

Done in regular session at the City of Pierre, the Capital, on this twenty-fourth day of February, 1915.

CITY COUNCIL OF THE CITY OF WOONSOCKET, SOUTH DAKOTA,
A MUNICIPAL CORPORATION *v.* SCHULER ELECTRIC AND TELEPHONE COMPANY AND A. G. SCHULER.

F-145.

Decided March 18, 1915.

Continuous Service Ordered — Reduction of Rates Refused.

The Board investigated the rates and service offered by the defendants in connection with the telephone plant operated by them in the city of Woonsocket. Service was being furnished from 7:00 A. M. to 10:00 P. M., with two operators serving alternately at the switchboard, and between the hours of 10:00 P. M. and 7:00 A. M. a lineman who slept in a room adjacent to the telephone office was supposed to answer night calls. Demand for continuous service was very strong.

The Commission investigated the revenues and expenses of the defendant, and also made a valuation of the defendant's property, and found that the reproduction value was \$17,769.58, and that its reproduction value less depreciation, including in said value \$200 for working capital, was \$16,000. Computations were then made which showed that continuous service could be furnished at the present rates.

Held: That public convenience and necessity demand that the subscribers of the defendant receive continuous service; that the defendant should furnish continuous service at the rates now being charged by it for different classes of service.

7 per cent. Allowed for Reserve for Depreciation.

In computing the expenses of the defendant, the Commission allowed 7 per cent. of the reproduction value as a charge for reserve for depreciation.

FINDINGS OF FACT AND CONCLUSIONS.

This matter came on for hearing upon the filing by the city council of the city of Woonsocket, in this office, of a resolution protesting against the rates exacted and the telephone service given by the Schuler Electric and Telephone Company and A. G. Schuler, in connection with the telephone plant of the Schuler Electric and Telephone Company in the city of Woonsocket, which is in words and figures as follows, to wit:

"A RESOLUTION ASKING THE BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF SOUTH DAKOTA TO INVESTIGATE CERTAIN COMPLAINTS REGARDING THE TELEPHONE SERVICE RENDERED BY THE SCHULER ELECTRIC COMPANY IN THE CITY OF WOONSOCKET AND SURROUNDING TERRITORY.

WHEREAS, A complaint having been made to the city council of the city of Woonsocket, South Dakota, by rural subscribers of the Schuler Electric company for telephone service, that inadequate service is being rendered and that great difficulty is being experienced by the said subscribers in securing proper telephone connections in the city of Woonsocket, and

WHEREAS, Complaint has also been made by telephone subscribers in the city of Woonsocket that the rates for telephone service in the city of Woonsocket, charged by the Schuler Electric company, are excessive and higher than the rates charged in other places of the same size for the same service, and

WHEREAS, Complaint has also been made by telephone subscribers in the city of Woonsocket that great difficulty is being experienced in securing telephone connections at night for emergency calls and that patrons have been able to secure the services of physicians at night only after considerable delay, and at times, because no telephone connection could be had, have been obliged to secure a physician by messenger;

Now, therefore, be it resolved, By the city council of the city of Woonsocket, South Dakota, that the Board of Railroad Commissioners of the State of South Dakota, be, and it hereby is, requested to appoint a time when such complaints may be heard and a decision rendered thereon, and the city auditor of the city of Woonsocket is hereby directed to transmit to the Board of Railroad Commissioners of the State of South Dakota a duly authenticated copy of this resolution.

Passed and approved this fifteenth day of September, 1914.

Ed. M. Newcomb, Mayor.

Attest:

H. B. Dowdell, City Auditor.

I hereby certify the foregoing to be a true and correct copy of the resolution passed on September 15, 1914.

(Seal)

H. B. Dowdell, City Auditor."

And it appearing to the satisfaction of this Board upon the filing of this resolution, the Board made an order that an investigation be made into the rates and services offered by the defendants in connection with the telephone plant operated by them in the city of Woonsocket, and the first hearing was held in the city of Woonsocket before Commissioners Robinson and Murphy on the ninth day of October, 1914. The complainants appeared by *Mr. Ed. M. Newcomb*, mayor, and *Mr. H. B. Dowdell*, city auditor. The defendants appeared by attorney *L. L. Lawson* and *Mr. A. G. Schuler*. *P. W. Dougherty*, counsel, appeared on behalf of the Commission.

The evidence discloses that there is considerable complaint against the quality of service and particularly with reference to the subscribers' inability to secure proper and efficient night service. In fact, it appears that the subscribers generally demand continuous service. The record shows that the service now given is from 7 o'clock A. M. to 10 o'clock P. M. with two operators serving alternately at the switchboard. Between the hours of 10 o'clock P. M. and 7 o'clock A. M., a lineman who sleeps in the room adjacent to the telephone office, is supposed to answer night calls. According to the testimony of Mr. Schuler, it has been the practice in the past to delay connecting the switchboard to the emergency bell and to refuse to answer calls for some considerable time after 10 o'clock, the reason given being that many of the subscribers overlooked the fact that it was 10 o'clock or after, and that regular day service was discontinued.

There is considerable testimony showing that the service is not as prompt and expeditious as it should be, and this indicates the reason for this condition, the fact that the operators are overworked and unable to properly handle the calls. This conclusion is borne out by the record, which discloses that the company has installed 227 'phones in the town exchange and performs switching service for over 200 farm line telephones as well as the work incident to a heavy toll business. The evidence further shows that while

the day operators have been overworked, they have been courteous and accommodating. There is also some testimony indicating that " 'phone out-of-order " or " 'phone not-working " complaints were not properly attended to. It is also a matter of record that several subscribers are receiving service for a less rental than that charged to others for the same class of service. This practice is discriminatory and contrary to law and should be discontinued.

At the first hearing the defendants not having filed an inventory of the plant and a complete financial statement, the matter was again set down for hearing at the offices of the Commission in the city of Pierre on the third day of February, 1915. The complainants appeared by *Mr. Ed. M. Newcomb* and the defendants by *Mr. A. G. Schuler*. On behalf of the defendants, the following financial statement of receipts and disbursements for the first eight months of the year 1914 was filed:

Total income from telephone company.....	\$3,281 72
Rent from Garage	256 00
Rent from Electric Light Company.....	160 00
<hr/>	
TOTAL INCOME FOR EIGHT-MONTH PERIOD.....	\$3,697 72

On this basis the total income for 12 months would be \$5,546.68.

The following is a statement of the expenses for the same period:

Lineman at \$50 per month.....	\$400 00
One operator at \$26 per month.....	208 00
One operator and collector at \$40 per month.....	320 00
Mr. Allen, repair on switch-board.....	12 00
Miscellaneous	91 44
Monarch Telephone Company.....	295 63
Kellog Switch-Board and Supply Company.....	67 95
Woonsocket Garage, batteries, etc.....	18 00
Anderson Lumber Co.....	2 35
One barrel batteries	20 00
McGraw Company	30 47
Crescent Oil Co.....	34 92
Revenue Collector	15 42
Coal	64 20
Insurance	65 00
Taxes	208 00
Trip to Pierre	17 63
Trip to Sioux Falls.....	20 86
A. G. Schuler, Manager, \$80 per month salary.....	640 00

TOTAL EXPENSES FOR EIGHT-MONTH PERIOD..... \$2,531 87

On the same basis, total expenses for twelve month period would be \$3,797.80.

The following statement is an inventory submitted by the company:

Switch-board equipment and office furniture.....	\$1,375 65
Cable and trimmings.....	1,826 66
Pole and material.....	1,949 27
Telephones	2,013 50
Freight charges (except poles and 'phones).....	286 24
4,973 pounds BB No. 14 wire at 4½ cents per pound.....	223 78
Hardware and blacksmith.....	157 42
Labor	1,864 05
Stock of supplies on hand and tools.....	386 31
Building, brick, full basement, heating plant.....	8,000 00

TOTAL \$18,082 88

The statement of expenses as filed by the company is very unsatisfactory, particularly with reference to those items which from their nature it is plain should be

listed as either replacement or new construction, and not as maintenance charges. The item for manager's salary, \$80.00 per month, appears to be high, for the reason that his time is divided between the management of the telephone plant and the management of the electric lighting plant and electrical supply business. In other words, only a part of his time is devoted to the affairs of the telephone company, and it appears that \$75.00 would be a high rate of compensation for this service. In connection with the statement of receipts, it is our opinion that the receipts from telephone rentals should be computed on the basis of the number of telephones installed at the time of the hearing, as given in an exhibit showing a complete directory at that time. This will make the receipts somewhat larger than the statement of receipts as given by the company for two reasons: more telephones were installed on that date than had been during earlier periods of the year, and the receipts from switching of farm lines will be included on the basis of contracts entered into covering the latter part of the year 1914, which indicate somewhat of an increase in revenue from this service, as compared with the receipts during the earlier period.

From the evidence and exhibits filed, it appears that the following is a correct statement of the annual revenue:

68 business 'phones at \$2.00 per month.....	\$1,632 00
159 residence 'phones at \$1.25 per month.....	2,385 00
20 desk sets at 25 cents per month.....	60 00
5 talking or ringing sets at 50 cents.....	30 00
Receipts from commissions and tolls.....	770 00
Rent on building for garage at \$30.00 per month.....	360 00
Rent, Electric Light Company, at \$13.00 per month.....	156 00
Rent, pole contacts, Electric Light Company, at \$7.00 per month	84 00
Rural line switching.....	373 20
TOTAL RECEIPTS	\$5,850 20

And the following is a fair statement of the annual operating expenses:

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Manager's salary at \$75.00 per month.....	\$900 00
3 operators at \$30.00 per month each.....	1,080 00
Lineman at \$50.00 per month.....	600 00
Maintenance	300 00
Heat and light.....	110 00
Miscellaneous items	50 00
Income taxes	15 42
Taxes	208 00
Loss, uncollectable accounts.....	50 00
Annual depreciation at 7% per year, reproduction value of \$17,769.58	1,243 87
Annual dividends at 8% on existing value of \$16,000.....	1,280 00
<hr/>	
TOTAL OPERATING EXPENSES.....	\$5,837 29
SURPLUS	12 91

The following reproduction value of the Woonsocket exchange as compiled by the Commission's staff, the cost figures given for land and buildings being the figures submitted by the company:

	<i>Freight</i>	<i>Cost of Material</i>	<i>Labor</i>	<i>Total</i>
Land and buildings..				\$8,000 00
Central office equip- ment	\$10 71	\$1,335 65	\$46 00	1,386 36
Station equipment ..	65 07	1,933 00	466 00	2,464 07
Exchange lines	296 11	3,994 21	1,250 63	5,540 95
General equipment, tools	1 50	65 10	.....	66 60
Material and supplies	14 56	291 04	.....	305 60
<hr/>				
TOTALS	\$387 95	\$7,619 00	\$1,762 63	\$17,769 58

No objection to the valuation as above given was offered by either of the parties represented at the hearing. The value of the land and buildings placed by the company at \$8,000 is not considered unreasonable and it is found that if the valuation of the plant was reduced \$8,000 and a fair rental charge for the portion of the building used for the telephone business was applied, the results would be approximately the same as obtained by the method adopted, that is, by including the entire cost of the land and buildings in the valuation of the telephone plant and crediting

the exchange with reasonable rental for that portion of the building used for other purposes. The cost of the property as stated by the company is somewhat higher than the value placed upon it by the Commission's staff, but the company's records have been so kept that there is no method of determining the amount spent for new construction and betterments, for reconstruction and replacement, and for maintenance, as distinct from each other.

The existing plant having been carefully checked up as to quantity and the best cost units obtainable having been correctly applied both as to the material and labor items by staff of the Commission, the reproduction value of \$17,769.58, thus obtained, will be accepted and used as the representative value or cost of reproducing the telephone plant of the defendants at Woonsocket, by the Commission, and while there is no particular evidence in the record upon which to establish the present depreciated or existing value of the plant as distinguished from its reproduction value, it does appear that the plant was rebuilt in the fall of 1908 and much reconstruction and replacement work has been done since that time. It is the opinion of the Commissioner who personally inspected the plant, that it is in efficient condition, maintenance having been well taken care of, and it is our conclusion, and we so find, that \$16,000, including \$200 for working capital — an item not before considered, is a fair and reasonable present value of the plant for the purposes of this case.

In connection with the item of \$300 allowed for maintenance, it may be said that while this amount is not as high as that claimed to have been paid by the company for the period covered, yet an examination of the statement made by the company discloses that several items therein included were properly chargeable to the depreciation fund and were not proper charges to maintenance or repairs, and such items were disallowed, and it is our opinion and we find that \$300 will be sufficient to properly take care of this item.

It will be noticed that in the estimated statement of ex-

penses three operators at a salary of \$30.00 per month each has been provided for. This was deemed necessary because it appears that public convenience and necessity demand that the subscribers and patrons of the company receive continuous service, and we find that three operators will be necessary for this purpose. It is true that one of the operators is now, and has been, receiving \$40.00 per month for work as an operator and as a collector, but it is also true that this operator also acted as collector for the electric light company, and it is only fair that part of this expense should be borne by the electric light company. It is our opinion that three efficient operators may be secured for \$1,080 a year, the amount allowed. The time of the operators should be so adjusted as to get the best possible results, and if possible, adjusted in such a way that two operators would be at the board during the time of the peak load, but in any event with the view that the exchange would give continuous service.

The item of \$1,243.87 allowed for annual depreciation at 7 per cent. of the reproduction value of the plant perhaps needs no explanation, as it is an elementary principle recognized by the different commissions having jurisdiction over public utilities, and sanctioned or required by the courts, that a reasonable percentage should be allowed for this purpose. While the Board in former cases has allowed amounts to cover this item ranging from 6 to 8 per cent., it is considered that 7 per cent. is not an unreasonable amount to allow in this case.

From the above findings, it is our opinion that the company can give its patrons and subscribers continuous service at the rates now being charged for different classes of service, and therefore the following schedule of rates should be fixed and the company ordered to amend its practices so as to conform to the conclusions reached herein:

Main line business.....	\$2 00 per month
Main line residence.....	1 25 per month
Desk sets	25 per month
Talking or ringing sets.....	50 per month
Message rate for non-subscribers.....	05 per message

Let an order be entered in accordance with the foregoing.

ORDER.

In this case, the Board having made a full and complete investigation, and having on this date made and filed its report containing its findings and conclusions, and being fully advised in the premises, and sufficient cause for this order appearing —

It is, therefore, ordered, considered and adjudged, That the Schuler Electric and Telephone Company be, and hereby is, required and commanded to furnish at its exchange in the city of Woonsocket in the county of Sanborn in this State, to its patrons and the patrons of other telephone lines connected therewith, continuous service, with the aid and assistance of three competent operators working alternately at the switchboard, so as to provide one night operator for the purpose of answering night calls and transmitting night toll messages, and that the rental and message rates of the said Schuler Electric and Telephone Company be, and hereby are, fixed at the sums following, to wit:

Main line business.....	\$2 00 per month
Main line residence.....	1 25 per month
Desk sets	25 per month
Talking or ringing sets.....	50 per month
Message rate for non-subscribers.....	05 per message

That portion of this order with reference to the continuous service and the furnishing of a night operator shall become effective April 1, 1915.

Done in regular session at the city of Pierre, the Capital, this eighteenth day of March, 1915.

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IN THE MATTER OF THE INVESTIGATION INTO THE BANCROFT TELEPHONE EXCHANGE, OWNED BY W. J. FRYE, OF BANCROFT, SOUTH DAKOTA, AND THE METHOD OF CONDUCTING THE BUSINESS OF SUCH EXCHANGE AS WELL AS THE TELEPHONE RATES AND TELEPHONE SERVICE IN CONNECTION THEREWITH.

F — 173.

Decided March 22, 1915.

Increase in Hours of Service Ordered — Increase in Business and Residence Rates Authorized — Switching Rates Fixed.

The Commission investigated protests against the limited hours of day service which the Bancroft company was furnishing and the inability of subscribers to secure telephone service at night even for emergency calls.

Demand was made for continuous service from 6 o'clock A. M. to 9 o'clock P. M., with emergency service from 9 o'clock P. M. to 6 o'clock A. M. The defendant conceded that this was a reasonable demand from a service standpoint, but insisted that its present revenue was too small to permit such service. The Commission investigated the revenues and expenses of the company and found that the revenue under the present schedule of rates was insufficient to meet expenses if the improved service was to be given.

Held: That public convenience and necessity require that the company should give continuous day service and emergency call night service with reasonable hours for Sunday service;

That the present revenue is inadequate and insufficient;

That the defendant should be authorized to increase its rates, both for business and residence service, by 50 cents per month per telephone;

That the defendant should be authorized and ordered to enter into contracts with the connecting rural lines on a basis of 25 cents per telephone for each telephone on a line having direct connection only with the Bancroft exchange and 18¾ cents per month per telephone for each telephone on a line having direct connection with the Bancroft and a second exchange.

Overhauling of Lines and Equipment Recommended.

Considerable complaint was made as to the poor condition of certain lines, but no evidence was introduced as to the cause of the trouble.

Held: That the companies owning and operating lines in Bancroft and the vicinity thereof should overhaul their respective lines and equipment and put said lines and equipment in proper and efficient condition.

Discrimination in Favor of Stockholders Eliminated.

Ordered: That the Collins Township Telephone Company and the German Line Telephone Company discontinue the practice of charging a lower rate to stockholders than to non-stockholders, and file with the Commission a schedule of rental rates covering telephone service furnished by them, said rates to apply to all subscribers, whether stockholders or non-stockholders.

Alternative Use of Bancroft-Carpenter Line Ordered.

Ordered: That the company owning the through wire between Bancroft and Carpenter be required, either to make a rural party line of it, or, if the line is to be continued as a trunk line, to establish a message rate for service over it between Bancroft and Manchester, the Bancroft exchange to receive a reasonable division of said rate for performing switching service.

APPEARANCES:

Defendant telephone company appeared by *W. J. Frye*, manager and owner.

Complainants appeared by *Mr. C. H. Clay*, a director of the Bancroft-Manchester Telephone Company.

Companies cited to appear were represented at the hearing as follows:

Osceola Telephone Company by *Mr. L. B. Meyers*, its president, and *Mr. George Evarts*, director.

Rosedale Telephone Company by *Mr. Andy Mears*, chairman, and *Mr. F. E. Denning*.

Collins Township Telephone Company by *Mr. F. A. Stumph*.

German Line Telephone Company by *Mr. William Rousch*.

FINDINGS OF FACT AND CONCLUSIONS.

The record discloses that the Bancroft Telephone Company gives telephone service from 8 o'clock A. M. to 12 o'clock M. and from 1 o'clock P. M. to 6 o'clock P. M., and from 7 o'clock P. M. to 8 o'clock P. M., and that the patrons and subscribers of the several rural lines connecting with the Bancroft exchange on a switching basis protest strongly against the limited hours of day service and the inability to

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secure telephone service at night, even for emergency calls. The record discloses that the interested rural subscribers demand continuous service from 6 o'clock A. M. to 9 o'clock P. M. and that emergency service be given from 9 o'clock P. M. to 6 o'clock A. M. The record further discloses that the defendant telephone company concedes the demand of its patrons is a reasonable one from a service standpoint, but insists that its present revenue is too small to permit it to grant the demand.

Mr. Frye's testimony shows that he places the value of the exchange plant at about \$700, and that the annual receipts are approximately as follows:

11 business telephones at \$1.25 per month.....	\$165 00
8 residence telephones at 75 cents per month.....	72 00
Commission on tolls	120 00
Switching rural party line 'phones at \$2.50 per month per line	240 00
<hr/>	
TOTAL	\$597 00

The fair estimate of the annual expenses of the company is as follows:

Salary day operator	\$360 00
Salary lineman and night operator.....	170 00
Maintenance	25 00
Rent	60 00
Heat, light and taxes.....	50 00
Depreciation at 8%.....	56 00
Dividends at 7%.....	49 00
<hr/>	
TOTAL	\$775 00
DEFICIT	178 00

From the above statement it may readily be seen that the revenue received under the existing schedule of rates is insufficient to meet the legitimate expenses, if the demand of the complainants for better and more nearly continuous service is granted. From the strong showing made in the record, it is our conclusion, and we so find, that public convenience and necessity require that better service should be given, and that the company should be ordered to give

continuous day service and emergency call night service, with reasonable hours for Sunday service. The record shows, and an analysis of receipts and disbursements prove conclusively, that the revenue received is inadequate and insufficient.

It is our conclusion, and we so find, that the defendant company be permitted and authorized to file a new and amended schedule of rates for both business and residence service showing an advance of 50 cents per month per telephone and that the said defendant telephone company be authorized and commanded to enter into contracts with connecting rural lines on a basis as follows:

25 cents per telephone for each telephone on a line having direct connection with the Bancroft exchange only; 18¾ cents per month per telephone for each telephone on a line having direct connection with the Bancroft and a second exchange;

And, that the company owning the blank wire between Bancroft and Carpenter be required to either attach telephones thereto, thereby making a rural party line of it (the record shows that there is some demand for service in the territory immediately covered by this line that cannot be served by already overloaded lines in the same territory) or if the line in question is to be continued as a blank or commercial line, the company be required to establish a message rate for service over this line between Bancroft and Manchester, the Bancroft exchange to receive a reasonable division of said rate for performing switching service.

When the changes, as outlined above, are complied with and made effective, basing our conclusions on the present volume of business as shown by the record, the following results obtain:

11 business 'phones at \$1.75 per month.....	\$231 00
8 residence 'phones at \$1.25 per month.....	120 00
4 desk sets at 25 cents per month.....	12 00
44 rural 'phones, switching at 25 cents per month.....	132 00
71 rural 'phones, switching at 18¾ cents per month.....	159 75
Commission on tolls.....	120 00
TOTAL	\$774 75

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In the table showing estimate of annual expenses in the sum of \$775, it would be noted that no allowance whatever has been made for management expenses and a very low allowance made for operating expense, and it is to be hoped that the business of the company will increase, and it is our opinion that it reasonably may be expected to do so upon the installation of the improved class of service.

Considerable complaint was made in the record against the poor condition of certain lines operating in this territory as well as much complaint against the operating efficiency of the switchboard at the Bancroft exchange. There is no evidence in the record from which it may be determined where the trouble lies. It is an admitted fact, however, that some of the lines have been poorly maintained, and it is our conclusion that the companies owning and operating lines in Bancroft and in the vicinity of Bancroft be advised to overhaul their respective lines and equipment and put said lines and equipment in proper and efficient condition. The evidence shows that certain companies, the Collins Township Telephone Company and the German Line Telephone Company in particular, are operating on the assessment basis and not on the regular rental basis of so much per telephone per month or year, as the law and the rules promulgated by this Board provide. In other words, some of these companies charge a non-stockholder subscriber a given rental rate and charge a stockholder subscriber for the same class of service a different and lower rate in the form of an assessment. These companies are admonished to discontinue this practice and are hereby commanded to cause to be filed with this Commission within thirty days a schedule of rental rates covering telephone service furnished by them, said rates to apply to all subscribers, whether stockholders or non-stockholders.

In the general investigation held by this Commission in 1913, in which the decision was filed August 21, 1913,* on this subject of discrimination as between subscribers who

* See Commission Leaflet No. 22, p. 974.

do, and those who do not, own stock in a telephone company, this Commission said:

"Notwithstanding the fact that this Commission has repeatedly held that telephone companies must make the same rates to all subscribers for the same class of service, and that they are forbidden by law to make different rates for stockholders than for persons who are not stockholders, it conclusively appeared at this hearing that many of the telephone companies doing business in this State have been, and still are, indulging in this violation of the law. On pages 6, 33, 50 and 65 of the book of opinions from the office of the Attorney General of this State, issued by this Commission on August 1, 1912, as well as on pages 824, 825 and 830 of the Annual Report of the Attorney General for the years 1911 and 1912, appear the opinions upon this subject, which have been quite generally furnished to the telephone companies.

"Every telephone company doing business in this State must know by this time that the practice of favoring their stockholders by lower rates than are charged to those who are not stockholders is unlawful and unjust discrimination under the Act, clearly violative of the provisions of Section 10 of Chapter 289 of the Laws of 1909, as amended by Chapter 218 of the Laws of 1911, and that any person or telephone company, and any officer or agent of any telephone company, violating the provisions of that section, is subject upon conviction to a fine of not to exceed \$200."

For the information of the companies herein, we quote Section 13, Chapter 218, Session Laws of 1911:

"Sec. 13 (Chap. 218, S. L. 1911), *Violation—Penalty*. Every owner or operator of a telephone line and any officer or agent of any telephone company, as defined in Section 1 of this Act, who shall violate, neglect, fail or refuse to comply with any provision of this Act, or who shall violate, neglect, fail or refuse to comply with any lawful order, rule or regulation of the Board of Railroad Commissioners of this State, shall, upon conviction thereof, be punished by a fine of not less than two hundred dollars (\$200) nor more than one thousand dollars (\$1,000) in the discretion of the court."

Considerable protest was made at the hearing on account of the fact that there is no telephone installed at the depot in Bancroft. This matter not properly coming before the Commission at this time, parties hereto are advised that if one or more of the interested parties will make complaint, the matter will receive consideration in a separate hearing.

Let an order be entered in accordance with the foregoing.

ORDER.

In this case, the Board having made a full and complete investigation and on this date filed its report containing its findings and conclusions, and being fully advised in the premises :

It is, therefore, ordered, considered and adjudged, That to become effective April 1, 1915, the Bancroft Telephone Exchange, and W. J. Frye, its owner, be, and hereby are, authorized to make effective a new schedule of telephone rates, as follows :

Business telephones	\$1 75 per month
Residence telephones	1 25 per month
Desk sets	25 per month

It is further ordered, considered and adjudged,

(a) That as to all rural party telephone lines having connection with the Bancroft Exchange only, the switching fee be, and hereby is, established at 25 cents per month, to be paid by the rural party telephone company to the Bancroft Telephone Exchange or Mr. Frye, its owner.

(b) That as to all rural party telephone companies connected with the Bancroft exchange and also connected with another exchange, the switching fee be, and hereby is, established at 18¾ cents per month.

(c) That within thirty days from the date hereof, the Bancroft Telephone Exchange and W. J. Frye, its owner, shall file in the office of the Board of Railroad Commissioners of this State, contracts covering its switching connection with telephone lines connected with said exchange on a switching basis, in accordance with the terms of this order.

If the interested parties are unable to agree upon a proper time for Sunday service or the form of the contracts to be entered into, another hearing will be held at which these matters may be considered, and jurisdiction of the cause is held for that purpose.

Done in regular session at Pierre, the capital, this twenty-third day of March, 1915.

FAIRPLAY TELEPHONE COMPANY *v.* FULTON TELEPHONE EXCHANGE COMPANY, HANSON COUNTY TELEPHONE COMPANY, ALEXANDRIA AND FULTON TELEPHONE COMPANY, BARD MUTUAL TELEPHONE COMPANY, FAIRVIEW-JASPER TELEPHONE COMPANY, FAIRVIEW TELEPHONE COMPANY AND GARDEN PRAIRIE TELEPHONE COMPANY.

F—174.

Decided March 25, 1915.

Discrimination in Rates for Messages between Exchanges Eliminated.

Complainant alleged that a rate of 15 cents was charged it for messages between Alexandria and Fulton, whereas a rate of 10 cents was charged to other companies for messages sent between the same points.

The Fairplay company, because of a disagreement with the Fulton Telephone Exchange Company, had connected its line with the Alexandria exchange of the Hanson County Telephone Company and now wished to send messages from the Alexandria exchange over the line of the Alexandria and Fulton company to the Fulton exchange at the rate of 10 cents per message charged to other local companies. Two arrangements were existing between the local companies in this district: one was to permit all rural party lines connected with any exchange on a switching basis, to intercommunicate with the second exchange at an additional charge of 12½ cents per month per telephone; the other was the message rate.

Held: That the Fairplay Telephone Company should have the alternative of transmitting its messages between Alexandria and Fulton at a message rate of 10 cents per message or of connecting with the Fulton exchange at a flat switching rate of 12½ cents per month for each telephone instrument on its lines.

DECISION.

In this case the Fairplay Telephone Company makes a complaint of discriminatory practices against it by the Fulton Telephone Exchange Company, the Hanson County Telephone Company and the Alexandria and Fulton Telephone Company, in that other telephone companies connected with the Alexandria exchange on a switching basis are charged a message rate of 10 cents on messages transmitted from the Alexandria to the Fulton exchange and connections, whereas a charge of 15 cents is exacted from the Fairplay Telephone Company for the same service.

The Fulton Telephone Exchange Company owns and operates the local exchange in Fulton and rural lines extending in a northeasterly direction from Fulton, the Hanson County Telephone Company owns the exchange at Alexandria, and the Alexandria and Fulton Telephone Company owns the line between Alexandria and Fulton over which these messages are transmitted between the two exchanges. The Fairplay Telephone Company is a short rural party line constructed about three miles north of Fulton and paralleling the lines of the Fulton Telephone Company; it has eleven subscribers, does not operate any exchange or switch, but under an arrangement with the Fairview Telephone Company has its wires strung on the poles of the latter company to the exchange of the Hanson County Telephone Company at Alexandria, with which it is connected on a switching basis. Originally most of the stockholders of the Fairplay Telephone Company were subscribers of the Fulton Telephone Exchange Company, but because of some real or fancied grievance, at all times remedial by application to this Board, they discontinued their subscription to the Fulton Telephone Exchange Company and constructed this independent line in the Fulton territory. The entire line and all of the subscribers thereto are located in territory which is naturally tributary to Fulton. It seems that the owner of the Fulton Telephone Company demanded of its subscribers a rental fee of \$1.25 per month or \$15.00 per annum, payable annually in advance. Objection was made not only to the rate but to the advance payment by these subscribers, who subsequently organized the Fairplay Telephone Company. This Commission has frequently held that it will not authorize a telephone company to require its patrons to pay telephone rent annually in advance, and has expressed its opinion that it is a reasonable provision to require the payment of telephone rental quarterly in advance, leaving it optional with the telephone company as to whether the rentals shall be collected monthly or quarterly in advance. The result of this disagreement is a disposition on the part of the

stockholders of the Fairplay Telephone Company to discontinue any patronage of the Fulton Telephone Company, and in pursuance of that policy, instead of extending its line into Fulton and obtaining connection with the Fulton exchange on a switching basis, it entered into this arrangement with the Alexandria exchange and the Fairview Telephone Company for switching service at that exchange, which is at least five miles further distant than the Fulton exchange, and now the patrons of the company wish telephone communication with the patrons of the Fulton Telephone Company and its connecting lines. The owner of the Fulton Telephone Company quite naturally feels aggrieved at the action of his former subscribers, who organized the Fairplay Telephone Company and, having made their switching connections with the Alexandria Telephone Company, now wish a rate accorded them for communication with the patrons of his exchange. He naturally feels that, inasmuch as these rates were reasonable and his demands just, there was no real or apparent reason why these subscribers should discontinue their service with him and organize a competing company in his own immediate vicinity. He likewise feels, quite naturally, that these persons, having perfected their own organization, should have connected with his exchange at Fulton on a switching basis so as to afford inter-communication with the subscribers of the Fulton exchange and of the other rural telephone lines which are connected with the Fulton exchange on a switching basis, and that his exchange and the rural party telephone lines connected therewith, including this newly organized company, would have constituted one telephone area for the inter-communication of telephone messages and would have thus been more valuable not only to his exchange but to all of the lines connected therewith, including the Fairplay Telephone Company.

These persons had a legal right to dissociate themselves from the Fulton Telephone exchange and to build their own line and make their switching arrangements with the Alexandria Telephone Company, and then, in common with

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other companies, tender for transmission at the Alexandria exchange over the lines of the Alexandria and Fulton Telephone Company to patrons of the exchange at Fulton, their toll messages and demand that they shall be transmitted at the same rate, to wit, 10 cents, that is charged to other companies. It appears from the record that there are two arrangements existing between the local companies in this locality. One is to permit all rural party lines connected with any exchange on a switching basis to inter-communicate with the second exchange at an additional charge of 12½ cents per month per 'phone or \$1.50 per 'phone additional annually. That is, all subscribers of rural party lines connecting with the Alexandria exchange have the option, after paying the 25 cents per month or \$3.00 per annum for each telephone instrument on their lines for switching service, to have inter-communication with the second exchange at 12½ cents per month or \$1.50 per annum for each telephone instrument on their lines. Many of the companies in that locality are connected on that basis, while yet others are connected on a switching basis with the Alexandria exchange and for messages between the Alexandria exchange and the Fulton exchange pay a message rate of 10 cents. Heretofore the message rate exacted from the Fairplay Telephone Company has been 15 cents. We are inclined to the opinion that the contention of the Fairplay Telephone Company is correct and that the Harrison County Telephone Company and the Alexandria and Fulton Telephone Company and Fulton Telephone Exchange Company should receive and transmit its telephone messages between Alexandria and Fulton at a message rate similar to that charged to the other rural party telephone lines, viz., 10 cents.

The owner of the Fulton exchange has offered to the Fairplay Telephone Company a switching connection through the Alexandria exchange at 12½ cents per month or \$1.50 per annum for each instrument on its line, but there is a disposition on the part of the stockholders who attended the hearing held in this case to accept the message rate in-

stead of the flat switching rate, and this evidently is on the theory that the message rate will be the cheaper of the two methods. It occurs to this Board, however, that, inasmuch as the Fairplay Telephone Company's lines are located in the Fulton territory and not in the Alexandria territory, the cheaper method for its subscribers for inter-communication with the patrons of the Fulton exchange and its connecting rural party lines will be at the flat switching rate of 12½ cents per month for each telephone instrument or \$1.50 per year. A telephone connection at a message rate of 10 cents, which will not cost these subscribers to exceed \$1.50 per annum, is not worth very much, and shows on its face a very small volume of business.

After a careful examination of the entire situation, we are of the opinion that the Fairplay Telephone Company should have the alternative of transmitting its messages between Alexandria and Fulton at a message rate of 10 cents per message or of connecting with the Fulton exchange on the flat switching rate of 12½ cents per month or \$1.50 per annum for each telephone instrument on its lines, and an order to that effect will be entered accordingly.

ORDER.

In this case this Board having made a full and complete investigation and on this date filed its decision containing its findings and conclusions, and being fully advised in the premises:

It is, therefore, ordered, considered and adjudged, That the Fulton Telephone Exchange Company, the Hanson County Telephone Company and the Alexandria and Fulton Telephone Company afford to the Fairplay Telephone Company the alternative of having messages received at the Alexandria exchange for transmission to the Fulton exchange and its subscribers and connecting lines at a message rate of 10 cents per message or of permitting the said Fairplay Telephone Company to have switching service through the Alexandria exchange with the exchange of the Fulton Telephone Company and its connecting rural party

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lines at a flat rate of 12½ cents per month or \$1.50 per annum for each telephone instrument on its rural party line; that either the message rate or the flat switching rate shall be adopted as an entirety for the Fairplay Telephone Company; that if the message rate is adopted by the Fairplay Telephone Company it shall guarantee to pay over monthly to the Alexandria exchange all fees for telephone messages originating on its line, and it shall not absorb said fees but shall collect the same from its subscribers; that the Fairplay Telephone Company be given the opportunity to change from either the message rate or the flat switching rate at such time as it may desire upon thirty days' notice to the Fulton Telephone Exchange Company and the Hanson County Telephone Company and the Alexandria and Fulton Telephone Company. Twenty days is considered a reasonable time within which the Fairplay Telephone Company shall elect which method it adopts, and it shall immediately give notice to the Fulton Telephone Exchange Company and the Hanson County Telephone Company and the Alexandria and Fulton Telephone Company, and upon receipt of such notice by said companies the rate adopted shall become effective immediately.

Dated March 25, 1915.

IN THE MATTER OF THE APPLICATION OF THE PUKWANA TELEPHONE COMPANY FOR AUTHORITY TO INCREASE ITS RATES.

F — 178.

Dated April 10, 1915.

Board Without Authority to Require Telephone Company to Charge a Rate in Excess of Maximum Fixed by Franchise Ordinance.

OPINION OF COUNSEL FOR BOARD.

In response to your request for my opinion upon the question asked by Mr. J. A. Stransky in his letter to you dated March 12, 1915, referring to the findings and order*

* See Commission Leaflet No. 42, p. 202.

of the Board of Railroad Commissioners *In the Matter of the Application of the Pukwana Telephone Company for Authority to Increase Rates*,* I beg to say that I have carefully considered this question in the light of the facts disclosed by all the files in the case which you submitted to me.

It appears that the order* of the Commission dated February 25, 1915, requiring the Pukwana Telephone Company thereafter, among other things, to charge and collect the full business rate of \$2.00 and the full residence rate of \$1.50 per month from all of its subscribers; from those having a business and a residence telephone on one line as well as those having business or residence telephones upon separate lines. It also appears that prior to this order the Pukwana Telephone Company, of which Mr. Stransky is the owner, had followed the practice of charging only \$3.00 per month to any subscriber who had a business and a residence telephone on one line, and that this practice was in accordance with the terms of the franchise ordinance granted to J. A. Stransky on April 4, 1914, by the board of trustees of the incorporated town of Pukwana. The effect of the order* would be, therefore, to require the telephone company to disregard the terms of its franchise and collect the sum of the regular business and residence rates, or \$3.50 per month, from certain subscribers who had theretofore enjoyed the \$3.00 rate.

There seems to be no question that the Commission proceeded regularly with its investigation in the premises and in the making of the order* referred to. The purpose of the order,* which was to put an end to a practice under which regular subscribers to business and residence telephones not on one line were being discriminated against, was undoubtedly proper. The sole question presented by the situation created by the order* is whether the rate of \$3.50 approved by the Commission or a rate not exceeding \$3.00 as provided in the franchise, is the proper rate to be collected from those subscribers of the Pukwana Telephone Com-

* See Commission Leaflet No. 42, p. 202.

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pany who have a business and a residence telephone on one line. Stated in another form, the question is, has the South Dakota Board of Railroad Commissioners power to fix a higher rate for telephone service within an incorporated town than the maximum rate specified in the ordinance of that town granting a telephone company the franchise to occupy its streets, alleys and public highways with its poles and plant.

This situation does not, in my opinion, involve any question of conflict in powers of the Commission and the town in the matter of regulating from time to time the rates for telephone service within the town. It involves only the power of the town on the one hand to contract, as a condition to its permitting a telephone company to enter upon its streets and alleys for the purpose of erecting poles and wires, that the rates to be charged for telephone service shall not, during the term of the contract, exceed the amount specified therein, and the power of the Board of Railroad Commissioners, on the other hand, to authorize such telephone company to charge a rate in excess of the maximum contract rate.

In arriving at my conclusion I have considered, first, the power of the town of Pukwana to make the contract which it did, thereby providing that the rate to any subscriber having both a business and residence telephone on one line should not exceed \$3.00 per month. I can find no provision in the statute prescribing the powers of the board of trustees of an incorporated town, giving the trustees express authority to regulate or fix telephone rates or to govern the manner of construction of the telephone plant upon its streets. Several cases which I have examined lay down the undoubted general rule that the regulation of rates of public service corporations is a legislative power; that it is, however, a power which the legislature may properly delegate to municipalities, but that in the absence of an enactment expressly authorizing a municipality to fix or regulate rates, that power remains in the legislature or in its appointed agency to the exclusion of the right of a

municipality attempting to fix or regulate rates, to contract away the governmental power of rate regulation. But so far as the situation at Pukwana is concerned, I am convinced that the provision found in its franchise to the telephone company is a valid contract specifying the maximum rate, and that the insertion of this particular provision in the franchise ordinance was authorized and supported by a sufficient consideration, for the reason that under Section 3 of Article X of the Constitution of South Dakota, no telephone line can be constructed in any town in the State without the consent of the local authorities. This right of the town to withhold its consent to a telephone company's entry into the limits of the town and upon its streets and alleys is without doubt a right which the town may not be compelled to surrender without requiring conditions to be observed on the part of the telephone company seeking to enter the town, and those conditions may properly include a binding obligation on the part of the telephone company not to charge the inhabitants of the town rates for telephone service in excess of a specified maximum.

It is my conviction that the law is well settled in this respect, that whenever a municipality having the power to make a contract requiring a telephone company or other public utility to abide by an agreed maximum rate proceeds regularly in exercising that power without fraud, and the telephone company accepts and agrees to observe all terms of such contract, including the provision limiting the amount to be charged for telephone service, a contract is consummated between the municipality and the telephone company which neither the legislature nor any agency to which the legislative rate-making power may be delegated can impair during the time covered by the contract, or until the contract may be abrogated by mutual consent of the parties or by action of a court of proper jurisdiction.

Applied to the question raised by Mr. Stransky, this condition of the law, as I view it, results in a denial of the authority of the Commission to require the Pukwana Telephone Company to charge a rate for service in excess of

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the maximum stated in the franchise ordinance, and renders unenforcible that part of the order* dated February 25, 1915, which requires the telephone company to charge the full amount of \$3.50 per month to all subscribers having both a business and a residence telephone on the same line. That charge cannot exceed \$3.00 per month.

This disposition of the question does not mean that the old discrimination must continue. The principle sought to be applied by the Commission in making the order is assuredly sound. It will be observed that the franchise ordinance does not purport positively to fix rates at any specified sum or sums, but it does provide that such a rate shall not exceed specified sums, viz., \$2.00 for business, \$1.50 for residence, and \$3.00 per month when a business and a residence telephone are on one line. Clearly it would be competent for the Commission in a proper proceeding to require that the telephone company file a proposed schedule of rates designed to meet the requirements of the franchise and at the same time to eliminate the discrimination heretofore practiced. I have no doubt of the authority of the Commission to approve, reject or modify such proposed schedule so long as the rates approved shall not exceed the maximum franchise rate.

In this connection I call your attention to the fact that the Pukwana franchise ordinance contains no provision limiting the time during which it is to continue in force. There are authorities holding that such a franchise is perpetual. This is not a question, however, that affects the conclusions I have stated above. If the contract is not terminated by mutual consent before its terms become a hardship upon either contracting party or the public, it is my belief that the courts and not the Commission would be the proper tribunal to afford relief; not by way of regulating rates, but by an interpretation of the contract.

The letter of Mr. Stransky, copies of the findings and order of the Commission and of all related correspondence are returned herewith.

Dated April 10, 1915.

* See Commission Leaflet No. 42, p. 202.

CITY OF MILBANK, A MUNICIPAL CORPORATION, AND THE MILBANK COMMERCIAL CLUB, A CORPORATION, v. DAKOTA CENTRAL TELEPHONE COMPANY, A CORPORATION, AND THE GRANT COUNTY TELEPHONE COMPANY, A CORPORATION.

F — 149.

Decided April 12, 1915.

Physical Connection for Toll Service Ordered.

The complainants sought the establishment of physical connection for toll purposes between the lines of the Dakota Central Telephone Company and The Grant County Telephone Company.

Jurisdiction of Commission Considered.

Objection was made by the Dakota Central Telephone Company that the parties complainant were not proper parties to bring this action, that the only proper party to bring such an action was a telephone company.

Held: That the parties complainant are proper parties, that to rule otherwise would place the entire control of the establishment of physical connections between the lines and exchanges of different telephone companies with the telephone companies themselves, regardless of the direct or indirect interest of the public.

Further objection was made that the Commission was without jurisdiction to order physical connection in cases of this kind, and the case of *The Pacific Telephone and Telegraph Company v. Eshleman et al.*, 156 Cal. 640, was cited in support of this contention.

Held: That with all due deference to the Supreme Court of California, the Commission in view of the decisions of other courts, must decline to follow the rule laid down by the California court and must entertain jurisdiction of this cause.

Commission Without Jurisdiction to Compel Specific Performance of Franchise Agreement.

The Commission considered as part of the evidence the franchises under which the Dakota Central company had been operating, particularly certain clauses of said franchises relating to the establishment of physical connection.

Held: That the Commission disclaims any jurisdiction to compel a telephone company to comply specifically with a provision contained in a franchise granted to it by any municipality.

Physical Connection for Toll Service Ordered — Establishment of Arbitrary Refused.

Both of the defendant companies were operating competing exchanges in the city of Milbank. The Dakota Central company furnished long dis-

tance service over its own lines and the Grant County company furnished long distance service over the lines of the Tri-State Telephone and Telegraph Company of which it was a subsidiary. The Dakota Central company had been the first in the field, but because of dispute as to rates charged, The Grant County Telephone Company had been organized. At first The Grant County Telephone Company's rates were lower than those of the Dakota Central company and consequently the Grant County company secured the greater number of subscribers. Later, however, it appeared that the rates being charged by The Grant County Telephone Company were unremunerative, and the rates of both companies were made the same.

The Dakota Central company contended that if it were obliged to connect with The Grant County Telephone Company and interchange toll messages, it would lose many of its subscribers who at present retained its service only because of the toll service, and maintained that should the connection be ordered, an arbitrary should be fixed by the Commission which would be sufficient to prevent any of the Dakota Central subscribers from discontinuing the rental of their telephones and becoming subscribers to the Grant County company.

Held: That considering the circumstances surrounding the granting of the franchises to the two telephone companies in Milbank, and further considering that at the time of the granting of the last franchise to the Dakota Central company, the city council of Milbank was led to believe that interchange of service was to be had between the two exchanges at a rate which should not be in excess of the rates charged by the Dakota Central company for the transmission of toll messages from its other exchanges in South Dakota, the patrons of The Grant County Telephone Company are entitled to transmit and receive long distance or toll messages from their telephone instruments at the same rate as is charged by the Dakota Central company to its subscribers, and the Dakota Central Telephone Company is entitled to charge, collect and receive the entire toll rate including the terminal fee for originating and terminating the message.

That public convenience and necessity demand that physical connection be established between the exchanges of the Dakota Central company and the Grant County company at Milbank for the receipt and transmission of long distance or toll messages by the patrons of the Grant County company from their telephones over the toll lines of the Dakota Central company to non-competitive points or points not reached by the toll lines of the Grant County company or its connecting toll line, the Tri-State Telephone and Telegraph Company.

That the exchanges of the two companies be connected by three trunk lines, the expense of the connection to be borne by the Grant County company which, for the purpose of this decision, is considered as the applicant, but the actual mechanical work of making the connection between the trunk lines and the exchange of the Dakota Central company

to be done by the Dakota Central company although the expense incurred must be paid by the Grant County company.

That the Grant County company guarantee, collect and pay over to the Dakota Central company monthly, all charges for toll messages originating on its lines, including messages which are reversed, which shall be considered as originating at the telephone instrument of the subscriber to which they are addressed.

Duplication of Facilities Condemned.

Held: That competition is not desirable in the case of telephone companies which are under regulation by a public administrative board having power to prescribe rates and regulate service.

That every duplication of facilities impose an additional burden upon the public.

FINDINGS AND CONCLUSIONS.

By the Board:

This proceeding was instituted by the complainants for the purpose of compelling the defendant Dakota Central Telephone Company to afford to its co-defendant, The Grant County Telephone Company, physical connection between the exchanges of the two companies at Milbank, in order that the patrons of The Grant County Telephone Company may receive at and transmit from the telephone instruments in their respective places of residence or business, long distance or toll messages. Two hearings were held, one at Milbank on December 22, 1914, and another at the offices of this Board on February 5, 1915.

The complainants were represented at each of these hearings by *Mr. Thad. L. Fuller* of Milbank, their attorney.

The defendant Dakota Central Telephone Company was represented at each of these hearings by *Mr. T. H. Null*, of Huron, its attorney, *Mr. J. L. W. Zietlow*, its president, and *Mr. W. G. Bickelhaupt*, its secretary.

The Grant County Telephone Company appeared by *Mr. C. B. Randall*, of St. Paul, its attorney, and by *Mr. E. C. Kast*, of Minneapolis, its secretary.

Briefs have been submitted by counsel and the questions presented on the record very elaborately discussed by them. We shall not within the limits of this decision attempt to discuss the authorities cited by counsel and will merely

content ourselves with citing the authorities upon which this Board relies.

At the opening of the hearing in Milbank, we were met by an elaborate objection going to the jurisdiction of the Board to entertain this proceeding, first, because of a want of proper parties complainant, and, second, because of a want of jurisdiction to order the connection. Section 8 of the telephone law provides that every telephone company shall connect its lines with the lines of any other telephone company doing business in the same vicinity and shall afford all reasonable and proper facilities for the interchange and switching of messages between lines for a reasonable compensation and without discrimination and under such rules and regulations as the Board of Railroad Commissioners may prescribe, with a proviso that messages originating on their own line shall have preference over messages originating on any line of competing companies. While a strict construction of the Telephone Law, Chapter 289 of the 1909 Session Laws as amended by Chapter 218 of the 1911 Session Laws, may lead to the conclusion that the only proper party complainant in a proceeding of this kind is a telephone company, we do not so construe it. By Section 2 of this law, the Board is charged with the duty of inquiring into all complaints and is given general supervisory jurisdiction and control over all telephone lines and exchanges constructed and operating within the State. Section 16 of Chapter 207, Session Laws of 1911, sanctions the filing of complaints by any person, firm, corporation or association, or by any mercantile, agricultural or manufacturing society, or any body politic, commercial club, board of trade, or municipal organization, and concludes with a provision that no complaint shall be dismissed because of the absence of direct damage to the complainant. We shall entertain jurisdiction of the complaint by the present parties complainant. To rule otherwise would place the entire control of connections between the lines and exchanges of different companies with the telephone companies themselves, regardless of the direct or indirect interest of the public to be served.

We have made careful examination of the authorities cited in the brief of learned counsel touching upon the jurisdiction of this Board to order connection in cases of this kind, and with all due deference to the Supreme Court of California and its opinion as expressed in the case of *The Pacific Telephone and Telegraph Company v. Eshleman*, et al., 166 Cal. 640, 137 Pac. 1119, 50 L. R. A. (N. S.) 652, we are inclined to the opinion that the law is properly expressed in the dissenting opinion of Justice Angellotti, and this is borne out by the very exhaustive annotation to this case in the report last above cited.

In the case of *The Pacific Telephone and Telegraph Company v. Wright-Dickinson Hotel Company*, 214 Fed. 666, wherein The Pacific Telephone and Telegraph Company applied for an injunction to restrain the enforcement of an order made by the Railroad Commission of Oregon, requiring it to make a physical connection with the Home Telephone and Telegraph Company for the receipt and transmission of telephone messages to and from the hotels of the defendant Wright-Dickinson Hotel Company, the United States District Court, in answer to the contention that the order amounted to an exercise of the right of eminent domain and the taking of property without just compensation and a taking of the property of The Pacific Telephone and Telegraph Company without due process of law, said:

"Now can it be said that the requirement that the Pacific company shall accept the messages from the hotels and transmit them, it receiving a reasonable consideration for each call, is an exercise of eminent domain and a taking of the plaintiff's property without just compensation?"

"It is not a new or different use or burden that is required by the service, nor does another or different person, corporation, or entity occupy or utilize the lines or system of the plaintiff company. It is still left in the full and unrestricted occupancy and operation of its own lines or system, except that it is required to observe and comply with a regulation that the Commission has deemed proper to impose upon it, namely, that it transmit also the messages coming from the hotels which originate on the wires of the Home company. This is not a taking of the plaintiff's property in any sense. It is but a reasonable regulation which is properly referable to the police power of the state. *Pioneer Telephone and Telegraph Company v. Grant County Rural Telephone Company*, 119 Pac.

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968; *Pioneer Telephone and Telegraph Company v. State*, 38 Okl. 554, 134 Pac. 398.

"The opposite view is entertained in an exhaustive and ably considered case from California (*The Pacific Telephone and Telegraph Company v. Eshleman*, 137 Pac. 1119) but we are unable to give assent thereto.

"We come all the more readily to our conclusion in view of the decree recently rendered in the District Court in the case of *United States v. American Telephone and Telegraph Company et al.* (no opinion filed), and in which the plaintiff herein was a party defendant, whereby, upon assent of the parties defendant, various telephone and telegraph companies were ordered and directed to make physical connection of their systems and accept interchange of business and communication. Thus the plaintiff has in effect conceded the principle we announce.

"It follows furthermore that there has been no taking of property without due process of law; nor has there been a violation of the interstate commerce clause of the Constitution. See *Jacobson v. Wisconsin, Minnesota and Pacific Railroad Company*,* *supra*."

We must decline to follow the rule laid down by the Supreme Court of California and will entertain jurisdiction of this cause to order the connection, if the facts appearing in the record are sufficient to justify the Board in making such order.

Pioneer Telephone and Telegraph Company v. Grant County Rural Telephone Company, 119 Pac. (Okl.) 968.

Pioneer Telephone and Telegraph Company v. State, 38 Okl. 554; 134 Pac. 398.

Hooper Telephone Company v. Nebraska Telephone Company, 147 N. W. 674.

This is another one of those infrequent, but nevertheless unfortunate cases where we have a duplication of facilities for the same purpose located in one municipality. While competition may be desirable in many lines, it is not desirable in the case of telephone companies which are under regulation by a public administrative board having power to prescribe their rates and regulate their practices, and in every instance where there is a duplication of facilities, a burden is necessarily imposed upon the public. Fortunately

* 71 Minn. 519, 74 N. W. 893.

there are but few instances in South Dakota where two telephone companies are operating exchanges in the same municipality. In every instance which has come under our observation in this or any other State where two or more telephone companies are operating in the same municipality, a burden is imposed upon the public either by compelling some of the citizens to subscribe to both telephones or all of them to pay an arbitrary charge above the regular rate for intercommunication with their neighbors and fellow citizens. The most equitable solution of the entire controversy now before this Board in this case would be a consolidation of the two exchanges under one ownership.

It appears from the evidence in this case that the Dakota Central Telephone Company obtained from the city council of the city of Milbank a franchise (Ordinance No. 55) approved July 1, 1901, continuing for a period of ten years, authorizing it to construct and maintain a long distance telephone system in and through the city of Milbank, for the purpose of supplying the citizens of Milbank and the public in general, facilities to communicate with persons residing in, near or at a distance from the city of Milbank. This franchise is the one under which the Dakota Central Telephone Company constructed and put into service its telephone exchange and telephone lines connected therewith at, and in the vicinity of Milbank, and it contains the following provision:

"The Dakota Central Telephone Lines further agree to maintain a suitable office within the city of Milbank, South Dakota, and further agree to connect with the Milbank telephone exchange or any local telephone exchange that may be established within the said city of Milbank.

"Said Dakota Central Telephone Lines also agree to connect with said local exchange or exchanges hereinafter established upon such reasonable rates as not to cause the patrons of such an exchange to *pay an excess of toll above the regular rates* established and in vogue by said Dakota Central Telephone Lines for like services at any other town or place for like distance."

This franchise was evidently granted with this specific provision in mind, on the theory that whenever another telephone company established an exchange in the city of

Milbank, the Dakota Central Telephone Company would grant it toll connections without causing the patrons of the second company to pay an arbitrary or an amount in excess of the regular toll rates then in effect for the transmission of toll messages over the lines of the toll company, and it was likewise contemplated by this provision that there should be afforded an opportunity by this connection for intercommunication over the lines of the two exchanges between the citizens of Milbank and vicinity. The condition imposed on the telephone company by this ordinance requiring connection between its telephone system and any subsequently established exchange or exchanges, was legal and valid under Section 3 of Article 10, of our State Constitution, which reads as follows:

“No . . . telephone line shall be constructed within the limits of any village, town or city without the consent of its local authorities.”

This provision of our Constitution was before our Supreme Court in the case of the *City of Mitchell v. Dakota Central Telephone Company*, 25 S. D. 409. In that case, our Supreme Court held as follows:

“It is quite apparent from this section of the Constitution that there is reserved to the municipality the right to grant, or refuse to grant to telephone companies the privilege or franchise for establishing a telephone system within the municipality, and that it necessarily follows that if it had the right to refuse to grant such franchise or privilege, it necessarily has the right to grant the same upon such terms and conditions as it may chose to impose, and if the telephone company accepts the conditions, they become binding upon the company. Such company cannot accept the grant and proceed to install their plant and refuse to comply with the conditions upon which the grant was made.”

In conformity with the provisions of this franchise, the Dakota Central Telephone Company constructed and put into operation its telephone system in Milbank in the fall of 1901. This franchise constituted a contract between the telephone company and the city of Milbank and its citizens, enforceable after the constructing and putting into operation of a second exchange by a proceeding in mandamus, at any time during the life of the contract.

People ex rel. Jackson v. Suburban Railway Company, 178 Ill. 594; 49 L. R. A. 650.

This contract expired by limitation of time on July 1, 1911. When it expired, the right of the telephone company to operate its plant and use the streets of the city therefore ceased and with it the right of the city and its citizens to demand the service.

McQuillan: Municipal Corporations, Vol. 4, Sections 1657-68.

Laighton v. City of Carthage, 175 Fed. 145.

Subsequent to its expiration, negotiations for a new franchise were conducted between the telephone company and the city. Communications on the subject were interchanged and personal conferences were had between the president of the telephone company and the municipal authorities, forms of ordinances were prepared and submitted by both sides. Although the original ordinance under which the telephone company was granted permission to construct and operate its plant in Milbank contained a very unambiguous, explicit, plain agreement obligating the telephone company to connect its system with any subsequently installed exchange, we now find it objecting to a much less drastic provision contained in the forms of ordinances proposed by the city of Milbank, and excusing itself by saying: "We should not be a party to anything that can be construed as usurping the powers of the Railroad Commissioners," and this in the face of a provision contained in Section 7 of our telephone law which reads as follows:

"Nothing in this Act shall be construed to prevent any telephone company from connecting its line or lines with any other telephone company's line or lines by mutual consent."

It will thus be seen that the inclusion of a connecting clause in the ordinance would not have amounted to a usurpation of any of the powers of this Board. In the same connection in which objection is made to the ordinance proposed by the city, we find the following:

"If your council sees fit to pass the ordinance in this form, the connecting matters can be handled through the Commission."

This communication from the president of the telephone company to the city attorney of Milbank was accompanied by a form of ordinance originally prepared by him, in which there was incorporated a connecting clause and which he says was stricken out only after consultation with the secretary and counsel of the company.

Finally, the city council on March 13, 1913, passed Ordinance No. 101 (complainant's Exhibit 3) granting the telephone company a franchise for a period of twenty years and containing a provision reading as follows:

"The Dakota Central Telephone Company * * * shall maintain a suitable office for the transaction of a public telephone business in the said city of Milbank, South Dakota, and shall connect its telephone exchange with any other exchange located within the city of Milbank. *Provided*, the exchange to be connected with is doing a general public telephone business and is equipped with telephone instruments and appliances of recognized standard make and kept in proper repair."

This ordinance is in almost identical language of the form submitted by the president of the company, even to the connecting clause which he struck out. The telephone company now contends that it never consented to or accepted this latter ordinance and is not therefore bound by its provisions. Complainant's exhibits numbered 4, 11 and 12, letters from the president of the telephone company to the city attorney of the city of Milbank reflect the attitude of the company toward the ordinance in question. In Exhibit 4, he says in effect that the company should not be a party to any usurpation of the powers of the Board and requests that the connecting clause be omitted and resort be had to a complaint before the Board of Railroad Commissioners for the telephone connection. In Exhibit 11, after expressing regret that the ordinance passed contains a connecting clause, says:

"If the council insists upon enforcing this, it will no doubt dampen somewhat the enthusiasm of our people in furnishing money for new work in Milbank and vicinity; in fact it would practically give the other company a new lease of life. *We could have accomplished a good deal more had this clause been a little more liberal.*"

Exhibit 12 opens with a negative and closes with an affirmative, reading as follows:

"It has, however, been our intention to remodel our exchange at Milbank this summer and carry out a plan outlined verbally, and if this is done since the present franchise has been passed, *I do not see why it needs any further acceptance.*"

The ordinance did not prescribe the manner of its acceptance, and consequently whether it was accepted or not depends upon the conduct of the parties.

Municipal Corporations (Abbott) Vol. 3, 2111-12.

McQuillan: Municipal Corporations, Section 1650.

The letter of March 18, 1913 (Exhibit 4) assumes that the matter of the granting of this franchise was a closed incident.

It appears from the record in this case that at the time the granting of this latter franchise was under consideration, in a conference with the city officials, the president of the telephone company said:

"Go on and pass an ordinance; go on and give us a new franchise and everything will be all right. You people go on and pass this ordinance and give us our franchise and then bring the matter before the Railroad Commission, and this connection will be made; there is no doubt about it; we can't make it unless it is ordered by the Commission, and you go on and give us the franchise."

It is not, however, the province of this Board, nor is it even necessary for it to pass upon the question as to whether or not the telephone company has accepted this franchise. It imposes on the telephone company less onerous conditions than did the original franchise. In the original franchise the telephone company obligated itself upon the installation of a second exchange to connect upon such reasonable rates as not to cause the patrons of the additional exchange to pay rates in excess of its regular toll charges, while the latter franchise requires it to connect only and when the second exchange is doing a general public telephone business and is equipped with telephone instruments and appliances of recognized standard make, kept in proper repair.

On June 12, 1905, the city authorities of Milbank granted a twenty-year franchise (Ordinance No. 75) to The Grant County Telephone Company to construct and operate in and through the city of Milbank a telephone system, and this franchise contained the following recital:

"SECTION 8. The Grant County Telephone Company (incorporated) agrees to maintain a suitable office within the city of Milbank, South Dakota, and further agrees to connect with any local telephone exchange that may be established within the said city of Milbank, and to furnish service at a reasonable rate."

There is little doubt but that at the time this franchise was granted, the city authorities of Milbank had in contemplation that when the telephone system of the local exchange was constructed and put into operation, there would be an opportunity afforded to its patrons for intercommunication with the patrons of the Dakota Central Telephone Company and for the receipt and transmission of long distance or toll messages from the telephone instruments of the patrons of The Grant County Telephone Company located in their respective places of residence and business. The telephone system of The Grant County Telephone Company was completed and put into operation in the fall of 1905. Up to the time of the hearing there has been no connection between the lines of these companies, either for intercommunication of local subscribers or for the receipt and transmission of long distance or toll messages.

This Board disclaims any jurisdiction to compel a telephone company to comply specifically with a provision contained in a franchise granted to it by any municipality of this State, but the information contained in these ordinances is valuable as disclosing the early history of the companies and the actual understanding which existed between the companies and the municipal authorities granting the franchises.

At the time of granting the franchise to The Grant County Telephone Company, the Dakota Central Telephone Company had 250 subscribers within the city of Milbank

and 54 subscribers on its rural lines connected with the Milbank exchange, while at the time of the hearing it had 38 city subscribers and 41 rural subscribers, and, on the other hand, The Grant County Telephone Company had 254 residence and 95 business subscribers in Milbank and 268 subscribers on its rural lines, or a total of 617 telephone instruments in operation.

The Grant County Telephone Company was organized because of a misunderstanding between the citizens of Milbank and vicinity and the Dakota Central Telephone Company and a belief on the part of the former that the latter was attempting to charge them exorbitant rates, and when The Grant County Telephone Company first started in business, its rental rates were fixed at 50 cents per month, obviously for the purpose of granting cheap telephone service and for competitive reasons, namely, to obtain the patronage of the subscribers of the Dakota Central Telephone Company. In a short time, however, the 50-cent rates were found to be wholly unremunerative and the result was that the rates of The Grant County Telephone Company and the Dakota Central Telephone Company were eventually placed on the same basis, to wit:

Business telephones	\$2 00 per month
Residence telephones	1 00 per month

The actual reasons why the Dakota Central Telephone Company opposes the connection are because a majority of the stock of The Grant County Telephone Company is owned by the Tri-State Telephone and Telegraph Company of Minnesota, which is a competitor of the Dakota Central Telephone Company and its connecting lines in the long distance or toll business; (it is a fact that the majority or from 51 to 54 per cent. of the stock in The Grant County Telephone Company is owned by the Tri-State Telephone and Telegraph Company, and the secretary of The Grant County Telephone Company is the auditor of the Tri-State Telephone and Telegraph Company, and it was represented at the hearing before this Board by the general counsel of

the Tri-State Telephone and Telegraph Company), and a claim on its part that to grant connection to The Grant County Telephone Company for the transmission of long distance or toll messages over its toll lines, will result in confiscation of its property in that its subscribers at Milbank will discontinue their patronage and become subscribers of The Grant County Telephone Company. This contention is founded on the theory that the Dakota Central Telephone Company is not a resident of the city of Milbank and The Grant County Telephone Company having originated in the city of Milbank, although now controlled by an outside corporation, has still a local color and a local prestige with the citizens of Milbank and vicinity, and to afford them toll connection over the Dakota Central Telephone Company's lines will make it unnecessary for any persons desiring to transmit toll messages to retain their subscription to the telephone instruments and service of the Dakota Central Telephone Company. They base their prediction for the future on their experience in the past. In order to overcome this feature of the case and to maintain the *status quo* of the two companies, it is contended that an arbitrary should be fixed by the Commission which should be sufficient to prevent any of its subscribers from discontinuing the rental of their telephone and becoming subscribers to The Grant County Telephone Company. In justification of this contention, it cites the decision of the Wisconsin Railroad Commission in *Winter v. La Crosse Telephone Company*, Commission Leaflet No. 18, page 952, and Commission Leaflet No. 34, page 1140, as well as a decision by the Board of Railway Commissioners of Canada in the matter of the application of the *Ingersoll Telephone Company et al. v. The Bell Telephone Company of Canada*, 4 Commission Telephone Cases, 823.

In its first opinion, the Wisconsin Commission in discussing this question, said:

"In this connection it may be well to consider the apprehension of the Bell company that its local exchange would be deprived of its patronage if its toll line facilities were made available to the patrons of the competing exchange. It is evident that the only inducement to subscribe to

the Bell system is the fact that thereby the subscriber is connected with a great telephone system covering like net work the entire country. The contention of petitioner that no consideration should be given to this fact, but that the toll line should be treated separately and not as an adjunct of the local exchange, does not seem tenable when we estimate the consequences to property rights that are likely to flow from such course. For the purpose of accounting and ascertaining equitable rates to be charged the public for services, it is essential to make such separation and to treat each exchange and class of service as a separate entity, although a common ownership of the property devoted to the different classes of service exists. But separating the property for the purpose of devoting one part to a use which will result in injury or damage to the user of the other part is entirely another matter, and cannot be done without compensating the owner for the damage thus sustained. No subterfuge can be indulged under the statute which will have the effect of depriving any private property employed in a public service, of its earning capacity.

"In the peculiar situation found in the instant case, it is possible to prescribe terms and conditions which will preserve the interests of the utilities respectively after the connection has been made. The subscriber of one company desiring toll service over the lines of the other company must pay in addition to the rate charged the patrons of the latter company a reasonable compensation for the additional service. Neither company will be permitted to absorb such additional charge, but the same must be paid by the patrons of either company using the toll lines of the connecting company. This will not result in any discrimination between subscribers of the same exchange, but will result in a just and necessary discrimination between the subscribers of the two exchanges. A subscriber, who has not installed the telephones of both exchanges, is not entitled to the toll service of both exchanges without paying an additional charge to the exchange with which he is not connected when desiring to use its toll line facilities."

In its second opinion, reported in Commission Leaflet No. 34, at page 1140, the Wisconsin Commission fixed an arbitrary on toll messages of 5 cents for a distance of 50 miles, 10 cents for a distance of over 50 and not exceeding 100 miles and for all distances over 100 miles 15 cents.

The Canadian Commission in its first opinion reported in Vol. 4, Commission Telephone Cases, 823, in discussing this question of maintaining the *status quo* of the two telephone companies, said:

"Speaking again with reference to Ingersoll, opinions are divided as to whether, if Ingersoll company is given long distance connection with the Bell company, the Bell subscribers will put their

instruments out when their contracts expire. The impression that is left upon our minds is that if long distance connection were given without any provision whatever safeguarding the existing rights of the Bell Telephone Company, in a very short time the 250 odd Bell subscribers in Ingersoll would be wiped off the Bell company's books and would be replaced by subscribers to the Ingersoll company.

"Now, it is all very fine to say that the freest intercourse should be given and the telephone users should have the widest area for the purpose of carrying on their communication; so they should; but, on the other hand, we find a company in the field with 250 subscribers, with long distance communication, established in Ingersoll many years before this local company grew up, and while on the one hand it is said to be a monopoly, said to have been managed in a high-handed manner, and so on, on the other hand there is capital invested there that it is just as much the duty of this Board to protect as it is to see that the subscribers of the Ingersoll system get long distance communication.

"If the rates of the Bell Telephone Company in Ingersoll are too high — and I presume they are not, because no application has ever been made to this Board by Bell telephone subscribers in Ingersoll to reduce them — and if an application had been made and it had been shown that the rates were unreasonable they would have been reduced.

"We have then this company with its capital invested furnishing a service to its subscribers; we have the Ingersoll company gradually encroaching upon what is said to have been the preserve of the Bell Telephone Company, until to-day there are in Ingersoll twice as many subscribers to the Ingersoll system as there are to the Bell system, but they are without the long distance connection. That long distance connection is the sheet anchor of the Bell Telephone Company. Without it I feel perfectly satisfied that there would not be the 250 subscribers that they have in Ingersoll. It is the local company that has the prestige. It is the local business men actively promoting concerns of this kind that make them successful, make them aggressive and get two or three times the subscribers that the outside company is able to get. The condition existing in Ingersoll no doubt will grow up elsewhere. It has grown up in some places. Now, while it is our duty if we can to give the subscribers to these rural exchanges long distance connection over the lines of the Bell Telephone Company, and while Parliament by putting this law on the book intended that we should act upon it, the question that is presented to us is under what terms are we able to relieve this tension without being unfair to either the subscribers to the Ingersoll Telephone Company, or to the stockholders of the Bell Telephone Company."

In this opinion, the Commission fixed the arbitrary to be paid by the connecting companies to the Bell company at 15 cents above the regular long distance tariff rates. Sub-

sequently an application was made by the Bell Telephone Company for a modification of the order, and in an opinion* filed July 16, 1914, the Canadian Commission required the connecting companies to pay to the Bell company a flat annual payment of \$100 for all companies having not to exceed 250 subscribers, \$200 for all companies having an excess of 250 subscribers, and \$300 for all companies having an excess of 600 subscribers, and in addition to this flat annual payment, fixed the arbitrary at 10 cents per message above the regular long distance toll tariff of the Bell company.

In the following somewhat analogous cases, physical connection has been denied:

Farmers Telephone Company v. Southern Bell Telephone and Telegraph Company, (Georgia) Commission Leaflet No. 37, page 443.

Arena and Ridgeway Telephone Company v. Mazomanie Telephone Company, (Wisconsin) Commission Leaflet No. 37, page 505.

Ladegard v. Sherman County Telephone Company, 4 Nebraska Railway Commission Reports, page 111.

The evidence in this case discloses that several of the subscribers of the Dakota Central Telephone Company in Milbank use its telephones solely and only for long distance purposes, and the inference is that if an order is passed granting physical connection to its competing telephone exchange, that these telephone instruments will be removed.

The Dakota Central Telephone Company in the present case stands in a peculiar position. While the negotiations for the second franchise were pending, its president prepared a form of ordinance containing a connecting clause which was almost identical with that contained in the ordinance which was actually passed on March 13, 1913. In transmitting the ordinance to the city attorney of Milbank, he states that after he had prepared the ordinance and consulted with the secretary and counsel for the company, it

* See Commission Leaflet No. 36, p. 367.

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had been concluded that the company should not be a party to anything which would usurp the powers of the Railroad Commission, and he had therefore crossed out the connecting clause, and advised that the city council pass the ordinance without a connecting clause and then make application to the Board of Railroad Commissioners for connection. And again, while in Milbank in consultation with the city attorney and the mayor of Milbank, he urged them to "go on and pass the ordinance; go on and give us a new franchise and everything will be all right" and either on the same afternoon or the following day in a conference with the city attorney and mayor and members of the city council, he urged them to go on and pass the ordinance, give the company the franchise and bring the matter of connection before the Board of Railroad Commissioners and the connection would undoubtedly be granted. His apparent insistence upon the elimination from the ordinance of a connecting agreement appears to have been induced by some arrangement or contract between his company and other connecting toll lines. The attitude of the company at the time it was negotiating with the city counsel of Milbank for this second franchise undoubtedly led the city council of Milbank to believe that the Dakota Central Telephone Company was ready and willing to make the connection.

It quite satisfactorily appears from the evidence in this record that at the present time the exchange of the Dakota Central Telephone Company is located in its building, which is on the opposite side of the street from the building in which is located the exchange of The Grant County Telephone Company and that when long distance or toll messages are received at the exchange of the Dakota Central Telephone Company addressed to subscribers of The Grant County Telephone Company, it has been the custom for the operator to call up the person to whom the message is addressed over The Grant County Telephone Company's lines and the person thus called comes to the Dakota Central station to receive the message. Any subscriber of The Grant

County Telephone Company who desires to send a long distance or toll message is required to go from his place of residence or place of business to a pay station or the exchange of the Dakota Central Telephone Company for that purpose. Much delay, inconvenience and annoyance is thus occasioned in the sending and receiving of long distance or toll messages by the subscribers of The Grant County Telephone Company. Whatever may have been the attitude of The Grant County Telephone Company prior to the tenth day of May, 1913, it does quite clearly appear from Exhibit 14, made a part of the record in this case, that The Grant County Telephone Company advised the Dakota Central Telephone Company of its willingness to make connection, and this in pursuance of a resolution which was passed by the city council of Milbank and served upon both telephone companies.

A careful analysis of the history of the two telephone exchanges in Milbank, as well as all the circumstances surrounding the granting to them of the franchises which they have had and do now enjoy, irresistibly leads to the conclusion that at the time of the granting of Ordinance No. 101, the city council were lead to believe that they were now about to receive that for which they had so long sought — connection between the two exchanges at a rate which should not be in excess of the rates charged by the Dakota Central Telephone Company for the transmission of long distance or toll messages from its other exchanges in this State.

And, we therefore find that the patrons of The Grant County Telephone Company are entitled to transmit and receive long distance or toll messages from the telephone instruments installed in their respective places of residence or business at the same rate as is charged by the Dakota Central Telephone Company to its subscribers, namely, its regular established toll rates for the transmission of toll messages to and from the city of Milbank, and that the Dakota Central Telephone Company is entitled to

charge, collect and receive the entire toll rate, including the terminal fee for originating and terminating the message.

We also find that public convenience and necessity demand that physical connection be established between the exchanges of the Dakota Central Telephone Company and The Grant County Telephone Company at Milbank, for the receipt and transmission of long distance or toll messages by patrons of The Grant County Telephone Company from the telephone instruments installed in their respective places of residence and business over the toll lines of the Dakota Central Telephone Company to non-competitive points or points not reached by the toll lines of The Grant County Telephone Company or its connecting toll line, the Tri-State Telephone and Telegraph Company;

That for the purposes of such physical connection, three trunking lines will be sufficient for the present; these to be connected in a suitable and proper manner with the exchanges of both companies and the expense of the connection to be borne by The Grant County Telephone Company, which latter company for the purposes of this decision is considered by this Board as the applicant for this connection;

That while the entire expense of the construction and installation of such trunking lines should be borne by The Grant County Telephone Company, the actual mechanical work of making the connections of the three trunking lines with the exchange plant of the Dakota Central Telephone Company should be done by the Dakota Central Telephone Company or its employees, and the actual expense thus incurred by them paid on the proper vouchers properly rendered to The Grant County Telephone Company;

That the Grant County Telephone Company guarantee, collect and pay over to the Dakota Central Telephone Company, monthly, all charges for toll messages originating on its lines, including messages which are reversed, which shall be considered as originating at the telephone instrument of the subscriber to whom they are addressed.

ORDER.

In this case, the Board having made a full and complete investigation and filed its report containing its findings and conclusions, and being fully advised in the premises:

It is ordered, considered and adjudged, That within thirty days from the date hereof, the Dakota Central Telephone Company and The Grant County Telephone Company make physical connections between their telephone exchanges in the city of Milbank, by means of three trunking lines;

That the actual work of making the connections and furnishing the material and stringing the trunking lines be done by The Grant County Telephone Company, except that the mechanical work of making the connections of said three trunking lines to the exchange plant of the Dakota Central Telephone Company at Milbank be performed by it or its employees, and that all of the expense of making such connections, including the actual expense of the Dakota Central Telephone Company in connecting the trunking lines to its exchange, be borne by The Grant County Telephone Company;

That immediately upon the completion of the construction of such trunking lines and their connection with the exchanges of both telephone companies at Milbank, the Dakota Central Telephone Company permit patrons of The Grant County Telephone Company to send and receive long distance or toll messages from the telephone instruments installed in their respective places of residence or business at the regular toll charge made to its own subscribers in Milbank, or what is known as the regular tariff rate;

That The Grant County Telephone Company guarantee to the Dakota Central Telephone Company and collect and pay over monthly all toll charges for toll messages originating on its lines (messages which are reversed being considered as originating on its lines).

Done in regular session at the city of Pierre, the capital, this twelfth day of April, A. D. 1915.

VIRGINIA.

State Corporation Commission.

COMMONWEALTH OF VIRGINIA *ex rel.* CITY OF STAUNTON *v.*
STAUNTON MUTUAL TELEPHONE COMPANY.

Case No. 464.

Decided April 20, 1915.

**Tentative Schedule of Rates Permitted to be Filed — Provision Made
for Refund of All Overcharges if Schedule is Not Subsequently
Approved — Investigation by Special Agent with Full
Powers Ordered.**

ORDER.

This day came the parties by their attorneys, whereupon the relator, the city of Staunton, asked leave to file its supplemental petition in these proceedings, which leave being granted, the said supplemental petition and exhibits are accordingly this day filed, and upon motion of the defendant company, leave is given to file its answer thereto as it may be advised within thirty days from this date.

Whereupon the defendant company asked leave to collect from its subscribers in Staunton from and after the first day of May, 1915, subject to the conditions hereinafter stated, the following tentative scale of rates:

Special line business telephone, per month.....	\$3 50
Special line residence telephone, per month.....	2 50
Duplex line business telephone, per month.....	3 00
Duplex line residence telephone, per month.....	2 00
Four-party residence semi-selected telephone, per month, each..	1 50
Business extension telephone, per month.....	75
Residence extension telephone, per month.....	50

which leave is granted upon the express condition and with the express agreement, however, that such rates are not to become effective as the lawful rates of the company unless they are hereafter approved by this Commission; and with the further express agreement that in the event such rates

are hereafter disapproved by this Commission and the establishment of lower rates ordered by this Commission, such reduced and lower rates shall be the only lawful rates of the said company from and after the said first day of May, 1915, and that all amounts collected by the company from each of its subscribers in excess of the rates hereafter prescribed by this Commission shall be forthwith refunded by the company in cash to each of such subscribers.

For the purpose of ascertaining what shall be the lawful rates of the company to be effective from and after the first day of May, 1915, this proceeding is hereby referred to Charles M. Broun, examiner, who is appointed a special agent, whose duty it shall be to investigate and report as to each and every of the complaints made in this proceeding and of the issues raised herein, together with every other matter deemed pertinent by himself or required by either of the parties, and he shall have all inquisitorial powers and the right to require the attendance of witnesses and parties now possessed by the State Corporation Commission, in accordance with the statute in such case made and provided. The said special agent shall conduct the hearing of such complaint and take the testimony of witnesses upon such notice and subject to the rules for taking depositions in a chancery case, which testimony shall be reduced to writing, and he shall report all of his findings to this Commission, and file the testimony taken before him therewith.

All other questions are reserved.

Dated at Richmond, April 20, 1915.

WISCONSIN.

Railroad Commission.

**LUXEMBURG TELEPHONE COMPANY v. LUXEMBURG-CASCO
TELEPHONE COMPANY AND CASCO-BRUSSELS TELEPHONE
COMPANY.**

U — 407.

Decided March 29, 1915.

**Increase in Switching Rates Authorized — Discrimination in Favor of
“Roadway” Companies Owning Equipment Eliminated —
Optional Flat Rate or Message Rate for Service
Through Additional Exchange Ordered —
Division of Interline Revenues Fixed.**

Complaint alleged that the Luxemburg Telephone Company was not receiving adequate compensation for the switching service which it performed for the Luxemburg-Casco Telephone Company. Other matters in dispute concerned the relation between the Luxemburg Telephone Company and the Casco-Brussels Telephone Company as to service between Casco and Luxemburg over a line owned by the Luxemburg-Casco Telephone Company.

The Luxemburg company had been switching the lines of the Luxemburg-Casco company without charge, and the only revenue which it derived from the Luxemburg-Casco company's lines was made up of charges for non-subscribers talking from telephones on those lines and of the customary 15 per cent. allowance for originating tolls. The Luxemburg company was also allowed as part consideration for furnishing switching service free use of the Luxemburg-Casco company's line between Luxemburg and Casco.

Held: That as the Luxemburg company was furnishing switching service to other “roadway” or rural companies at \$2.75 per telephone per year, by furnishing this service to the Luxemburg-Casco company without compensation other than that obtained from the use of the through line of the Luxemburg-Casco company and from subscribers' fees and tolls, the Luxemburg company was guilty of discrimination.

That the Luxemburg company should charge the Luxemburg-Casco company the regular switching rate of \$2.75 per telephone per year; that the Luxemburg company might rent the equipment of the Luxemburg-Casco company, just as it might rent equipment from an individual subscriber owning his telephone.

That a rate of 10 cents per message should be charged for each message

passing between Luxemburg and Casco in either direction, the revenue to be divided equally between the originating company (either the Luxemburg company or the Casco-Brussels company) and the owner of the through line (the Luxemburg-Casco company). That whenever a majority of the subscribers on any line served by any of the companies should elect to take service between Luxemburg and Casco on a flat rate basis, a rate of \$2.00 per telephone per year, in addition to the regular switching or exchange rates, should be applied to each telephone on such line and the revenues divided in the same way as the revenues from the message rate. That election to take such service at a flat rate should remain effective for not less than six months.

That the charge of the Luxemburg company for non-subscriber service in case of messages originating on the lines of the Luxemburg-Casco company should be discontinued.

OPINION AND DECISION.

Complaint in this matter was filed November 7, 1914. The complainant is a telephone company engaged in the telephone business in and around Luxemburg, Wisconsin. The respondents, the Luxemburg-Casco Telephone Company, which has been referred to in connection with this case also as the Casco-Luxemburg Telephone Company, and the Casco-Brussels Telephone Company, are respectively a small rural company operating lines connected to the Luxemburg exchange and a utility operating lines in and around the village of Casco.

Hearing in this matter was held at Madison, January 14, 1915. Appearances were: For the Luxemburg Telephone Company, *Bruemmer and Bruemmer*, by *L. W. Bruemmer*; for the Luxemburg-Casco Telephone Company, *G. H. Moede*; for the Casco-Brussels Telephone Company, *Edward Bohman*.

The matter complained of is, in general, that the Luxemburg Telephone Company does not receive adequate compensation for the switching which it does for the Luxemburg-Casco Telephone Company. Other matters in dispute, although not clearly set forth in the complaint, related to the relations between the Luxemburg Telephone Company and the Casco-Brussels Telephone Company, relative to service between the villages over a line which appears to be

owned by the Luxemburg-Casco Telephone Company. The Luxemburg-Casco Telephone Company has two lines running to the Luxemburg exchange and a through line from Luxemburg to Casco connecting at those villages with lines of the telephone companies operating therein and apparently not reaching the entire distance to the switchboards of these companies. The agreement by which the Luxemburg Telephone Company furnishes service to the Luxemburg-Casco Company provides that the Luxemburg company shall make no charge to the Luxemburg-Casco Telephone Company for switching service. The only revenue which the Luxemburg Telephone Company derives from the Luxemburg-Casco lines is made up of the charges for non-subscribers talking from 'phones on those lines and the customary 15 per cent. allowance for originating Bell tolls. The theory upon which this arrangement was based appears to have been that in furnishing a through line between Luxemburg and Casco which might be used by the Luxemburg Telephone Company and the Casco-Brussels Telephone Company, and in permitting the Luxemburg Telephone Company to retain the non-subscriber charges and a percentage of originating Bell tolls, the Luxemburg-Casco Company was giving adequate compensation for the service rendered to it. As between Luxemburg and Casco, leaving out of consideration subscribers of the Luxemburg-Casco lines, the agreement seems to have been that the Luxemburg company would charge its subscribers 10 cents per message for service to and including the village of Casco, and would charge in addition the Casco-Brussels Telephone Company's regular toll or rural line charges whenever the messages from Luxemburg went beyond the village of Casco. In such cases, the rural or toll line charges were to be turned over to the Casco Telephone Company. The 10-cent charge for messages from Luxemburg to Casco was retained by the Luxemburg company. On messages coming from Casco to Luxemburg, the Casco Telephone Company was supposed to pay the Luxemburg Telephone Company 5 cents per message plus the regular toll or rural line charges where

messages went beyond the village limits of Luxemburg. No payment was made to the Luxemburg-Casco Telephone Company on account of any of these messages, presumably on the assumption that the service furnished to the Luxemburg-Casco Company by the other companies concerned was to be the compensation for the use of that company's through line. This was the condition of affairs as existing under a contract entered into in 1908. On July 16, 1913, the Luxemburg Telephone Company and the Luxemburg-Casco, or Casco-Luxemburg Telephone Company, entered into a new contract, whereby the Luxemburg Telephone Company was to receive a 10 cent non-subscriber fee from all non-subscriber messages originating on the Casco-Luxemburg company's lines, and all toll charges as theretofore. The Luxemburg-Casco company was to furnish a complete metallic circuit from the Luxemburg Telephone Company's office to the office of the Casco-Brussels Telephone Company. There seems to have been a supplementary agreement that in erecting this metallic line, the Luxemburg-Casco company was to pay for the material and all three companies were to share in furnishing the labor. However, this line has never been completed. The principal owner of the Luxemburg Telephone Company was under the impression that this line is really owned by the Luxemburg Telephone Company, as he stated that at the time he purchased his stock in that company the party from whom he purchased it represented to him that the Luxemburg Telephone Company was the owner of this through line. The ownership of this line by the Luxemburg Telephone Company, however, was denied by the representative of the Luxemburg-Casco Telephone Company, and no evidence was introduced to show that the line had ever been sold to the Luxemburg Telephone Company.

Although the relations of the three companies to each other have been guided by the contracts above referred to with the exception that the second contract was never fulfilled, and that the Casco-Brussels Telephone Company has apparently failed to turn over to the Luxemburg Telephone

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Company 5 cents per message for messages from Casco to Luxemburg, it is very questionable whether the matters governed by these contracts were matters which could properly be made the subject of special contract. It appears that the Luxemburg Telephone Company is furnishing switching service to other rural lines at a rate of \$2.75 per telephone per year. In furnishing this service to the Luxemburg-Casco lines without any direct charge and without any compensation other than that obtained from the use of its through line and from non-subscribers' fees and tolls, it seems to us that the Luxemburg Telephone Company was giving to the Luxemburg-Casco Company a service which it was not offering on equal terms to other roadway companies. It is true that the Luxemburg-Casco Company was furnishing equipment for the use of the Luxemburg company, but the manner in which this should be handled is clearly outlined in the public utility law, where it is provided that no special rate shall be given on account of the ownership of the equipment by the party served, but that the utility may rent from the party served equipment furnished by him and pay a reasonable rental therefor. In this case, the parties served are not individuals, but are roadway companies. However, we think the principle announced in the law should apply equally well in the case of service furnished to two roadway companies as in the case of service furnished to two individuals, and the first step in the settlement of this case seems to us to be for the Luxemburg Telephone Company to charge the Luxemburg-Casco Telephone Company its regular switching rate for the service rendered.

This leaves for consideration the relations of the three companies arising from the service between Luxemburg and Casco. As we understand the situation, the Luxemburg-Casco subscribers have free service from Luxemburg to Casco, whereas all other subscribers of the Luxemburg company have had to pay a message rate for this service. Luxemburg-Casco subscribers live in the district lying in a general way between Luxemburg and Casco, and undoubt-

edly have need for the service of both exchanges, probably a greater need for this service than is felt by other subscribers of the Luxemburg company. Consequently, it may not be practicable to apply a message rate to all traffic passing from Luxemburg to Casco. If parties using this service are given their choice of a message rate or an additional flat rate above what they would have to pay for Luxemburg service only, this situation can be taken care of. From an operating standpoint, there are certain difficulties in the way of giving each individual on loaded lines the choice between a message rate and a flat rate basis for taking this service. If, however, the general proposition is established that this service will be furnished on a message rate basis with the proviso that whenever the majority of subscribers on any one line choose to abandon the message rate basis and elect to pay a higher flat rate, such flat rate shall take effect for the entire line, the difficulties which might be attendant upon the extension of the right of choice to each individual will be almost, if not quite, eliminated. The same situation would apply as regards service from Casco to Luxemburg. Because of the unsettled conditions which have prevailed and the fact that no analysis of expenses has been practicable to point out exactly the costs to be considered in this case, we are not in a position at the present time to say that the rate fixed herein will continue under all conditions to be the reasonable rate or that the division of it will be reasonable under all conditions. Such matters must be for a time experimental, and if experience shows the necessity for amending the rules established in this case, such amendment can be made. We believe, however, that for the present, a reasonable regulation will provide a rate of 10 cents per message on all messages from Luxemburg to Casco, except as modified by the adoption of the flat rate plan hereafter outlined, and a similar rate on all messages from Casco to Luxemburg, except as modified by the adoption of such flat rate plan. Whenever the majority of subscribers on any line elects to abandon the message rate plan and to make use of a flat rate for the service

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between Luxemburg and Casco, the message rate plan shall be abandoned as far as business originating on that line is concerned, and flat rate charge of \$2.00 per year for the service between Luxemburg and Casco shall be added to the regular rate per 'phone for the exchange service of the exchange to which such subscribers are connected. All revenues, whether from the message rate or from the flat rate plan for service over the line from Luxemburg to Casco, shall be divided equally between the company originating the message and the Luxemburg-Casco company, which is the owner of the through line. Thus, on a message from Luxemburg to Casco, the charge of 10 cents will be divided, one-half to the Luxemburg Telephone Company and one-half to the Luxemburg-Casco Company. On a message from Casco to Luxemburg, the 10 cents charge will be divided equally between the Casco-Brussels Telephone Company and the Luxemburg-Casco Telephone Company. Where the flat rate of \$2.00 is applied, \$1.00 shall go to the company from which the message originates, and \$1.00 shall go to the Luxemburg-Casco company. The gross cost of the service now obtained by the Luxemburg-Casco Telephone Company, if subscribers of that company choose to take the service on a flat rate basis, would be \$4.75 per year per subscriber. However, as this service will be billed to the Luxemburg-Casco Company directly, rather than to the individual subscribers, the revenues obtained by the company from the use of its line between Luxemburg and Casco will constitute a very material offset to the charges for exchange service. We think that with this plan in use as outlined, the Casco-Brussels Telephone Company and the Luxemburg Telephone Company will be fairly compensated for the work which they do in furnishing service to the Luxemburg-Casco Telephone Company, and that that company in return will receive fair compensation for the use of its lines by the other companies. If experience shows that modifications of this order should be made, such changes as appear necessary can be made at a later time.

It is, therefore, ordered,

1. That the Luxemburg Telephone Company shall apply its regular switching rate of \$2.75 per subscriber per year to the Luxemburg-Casco Telephone Company, as well as to all other companies for which it does switching service.

2. That a rate of 10 cents per message shall be charged for each message from Luxemburg to Casco or from Casco to Luxemburg, the revenue to be divided equally between the originating company, that is, the Luxemburg Telephone Company, or the Casco-Brussels Telephone Company, as the case may be, and the owner of the through line, that is, the Luxemburg-Casco company, except that whenever a majority of the subscribers on any line served by any of the companies concerned in this case elects to take the service between Luxemburg and Casco on a flat rate basis, a rate of \$2.00 per telephone per year, in addition to regular switching or exchange rates, shall be applied to each telephone on such line and the revenues divided in the same way as the revenues from message rates. The election to take such service at a flat rate shall become effective at the beginning of the next month and shall remain effective for not less than six months.

3. The present charge of the Luxemburg Telephone Company for non-subscriber service in the cases of messages originating on the lines of the Luxemburg-Casco Telephone Company shall be abandoned.

4. All accounts affecting the relations among the three companies shall be settled at least twice a year, as of July 1 and January 1, but this shall not prevent more frequent settlements if the companies so desire.

Dated at Madison, Wisconsin, this twenty-ninth day of March, 1915.

IN THE MATTER OF AN INVESTIGATION AND HEARING ON MOTION
OF THE COMMISSION, OF THE ALLEGED REFUSAL AND
NEGLECT OF THE WISCONSIN TELEPHONE COMPANY TO
EXTEND AND RENDER TELEPHONE SERVICE IN THE VICIN-
ITY OF GREENVILLE AND MEDINA.

U — 409.

Decided March 29, 1915.

**Installation of Exchange Ordered — Flat Rate for Unlimited Service
Through Additional Exchange Ordered — Message Rate for
Service Through Additional Exchange at Option of
Subscriber.**

After receiving a number of informal complaints to the effect that the Wisconsin Telephone Company had refused and neglected to furnish service to certain prospective subscribers residing in the vicinity of Greenville, the Commission on its own motion made an investigation.

The complainants were farmers situated between seven and nine miles northwest of the Wisconsin company's Appleton exchange. Under the regular Appleton rates for rural service, with the number of subscribers per line properly limited, the rates to subscribers in this district would be \$24.00 to \$30.00 per year. This would be more than the subscribers could afford to pay. On the other hand, if the company furnished this service at a lower rate, it would be guilty of discrimination. Service over rural lines, without limitation of the number of subscribers per mile, had proved inadequate and would be increasingly more unsatisfactory as the number of subscribers became greater.

Held: That the Wisconsin company, in order to furnish unlimited Appleton service to prospective subscribers in the vicinity of Greenville, at rates which they could afford to pay, should establish an exchange at Greenville and charge for service from that exchange the regular rural rate of \$15.00 per year. Unlimited service through the Appleton exchange should be furnished at the rate of \$3.00 per year per telephone in addition to the \$15.00 Greenville rate. To those subscribers who did not wish unlimited service to Appleton, a charge of 5 cents per message for "two-number" service and 10 cents per message for "particular-party" service should be made.

OPINION AND DECISION.

This case has grown out of a number of informal complaints filed with the Commission to the effect that the Wisconsin Telephone Company has refused and neglected to extend telephone service to parties in the locality concerned and to furnish adequate service to existing subscribers.

Hearing was held at Greenville, Wisconsin, July 15, 1914. For the Wisconsin Telephone Company, *J. F. Krizek* appeared. The complaining parties were not represented by counsel, but a number of them were present in person to testify.

The situation is about as follows: The Wisconsin Telephone Company operates an exchange at Appleton and another at Hortonville, both in Outagamie County, some twelve or thirteen miles apart. A number of years ago the Wisconsin Telephone Company took over the plant of what was known as the Fox River system, including an exchange in Appleton and rural lines reaching out of Appleton in a northwesterly direction toward Hortonville. Since that time, the Wisconsin Telephone Company has operated these lines with a few additions to the number of subscribers, but apparently without the construction of any additional lines. As a result, there are apparently a considerable number of farmers in the vicinity between Hortonville and Appleton who do not have telephone service. At the time of the hearing, testimony was introduced which showed that in some instances these farmers had repeatedly applied for telephone service and had been put off without a full explanation of the reasons why service was not furnished. These farmers were living from seven to eight miles from Appleton.

The subscribers on existing rural lines, a number of whom were present at the hearing, introduced vigorous criticisms of the service furnished on those lines. In a number of cases the subscribers appear to have encountered great difficulty in securing connection with the central office and in securing their party after the operator has acknowledged their calls. Another difficulty appears to have been that the ringing on these rural lines was indistinct, with the result that parties frequently did not know when they were being called. It was suggested on behalf of the Wisconsin Telephone Company that these difficulties might be due to the large number of subscribers upon the lines. We hardly think, however, that all of the difficulties can be accounted

for on this score. There seems to be no question but that lines have been poorly maintained, and the testimony seems to indicate that in some instances at least the company has not made conscientious efforts to maintain lines in good condition. One witness testified that during the past year or so the service had been fair, but that previous to that his service was poor and that it was only after the most vigorous protests that his service was improved. He was the only witness who testified to any improvement in service, except for temporary improvements following the visits of trouble men.

Whatever may have been the attitude of the telephone company and however much justification subscribers may have for feeling that the company has not fulfilled its obligations to render service in the proper manner, the needs of the future with regard to this service are not effected thereby. The situation remains that the territory most in need of service is situated from seven to nine miles from Appleton and that there seems to be a substantial unanimity of opinion among the residents of this section that an unlimited service into Appleton is needed. Appleton apparently is the market town for this farming community. While the length of lines and the number of subscribers which have been carried on a line cannot excuse the company for having furnished poor service, the distance between the locality concerned in this case and the city of Appleton is such that it would be impracticable for any telephone company to attempt to furnish first class rural service with the number of parties on a line limited to 8 or 10 at the present rates which the company is charging for this service.

In furnishing service to these lines, the Wisconsin Telephone Company has taken over the practice of the Fox River system. The regular rural rates of the Wisconsin Telephone Company for service out of Appleton with the number of subscribers on a line properly limited, are \$15.00 per year for subscribers within a four-mile radius, and \$3.00 per year additional per subscriber for each mile of excess radius. Under the regular Appleton rates, therefore, for

rural service, with a limited number of subscribers, the rates for parties in the seven to nine mile zone would be from \$24.00 to \$30.00 per telephone per year instead of the present rate of \$15.00 per 'phone. It seems to require no argument to show that a rate of from \$24.00 to \$30.00 per year for rural service would be more than subscribers would feel able to pay for the service. On the other hand, for the company to have furnished its standard rural service, meaning by standard service, service with a limited number of subscribers per line, to parties in this locality without charging the excess radius rate would have been considered an illegal discrimination. The situation appears to us to have been such that there was no practicable way by which these subscribers could be handled directly through the Appleton central office with the number of subscribers on a line properly limited unless the rate were to be such as to discourage the use of the service. Consequently, any extension of lines by the Wisconsin Telephone Company from its Appleton exchange to serve those portions of the locality which are at present without telephone service would have resulted either in too large a number of subscribers on a line or in the rural telephone business being so unprofitable that the company could not be reasonably required to extend its lines. This condition, of course, does not excuse the company for having furnished poor service on existing lines, that is, for having furnished service which was poor, considering the number of subscribers on the lines. It may, however, to some extent justify the company for its failure to extend lines into the undeveloped portion of this locality and for its delay in securing a permanent settlement of the difficulties.

This, of course, brings us to the question of what should be done at the present time to furnish adequate service to the residents of this locality. On behalf of the Wisconsin Telephone Company, it appears that seven proposals were made for taking care of the situation. A number of these proposals provided that the rural lines in the vicinity of Greenville should be taken over by a company to be formed

among the subscribers of that locality. Almost without exception, however, these subscribers appear to be opposed to entering into the telephone business, and their reasons are sufficient to prevent us from seriously entertaining any suggestion for the solution of this problem which would involve a transfer of ownership of the line and equipment concerned from the Wisconsin Telephone Company to an independent organization to be formed for the purpose of taking over the equipment. As it seems impracticable to handle the entire locality directly through the Appleton exchange, with a proper restriction in the number of subscribers on a line, and at a rate which would not be prohibitory to the majority of the present or prospective users of telephone service, there are only three of the suggested means of handling of this situation which appear at all advisable.

The first of these would be to draw a line about midway between Appleton and Hortonville and take all lines on the Hortonville side into Hortonville and all lines on the Appleton side into Appleton, with a reasonable restriction in the number of subscribers per line, and an excess radius rate. This, however, would result in a considerable number of parties who require Appleton service being connected to the Hortonville exchange, and even with a line drawn between the two exchanges, the excess radius rate applicable to parties outside of the four-mile limit would result in a higher rate for service in the locality around Greenville than the subscribers could be expected to pay.

The second of the proposals to be considered calls for the establishment of an exchange in Greenville by the Wisconsin Telephone Company, the taking into this exchange, on lines with not to exceed 10 parties per line, of all subscribers beyond the four-mile radii from Hortonville and Appleton, and the furnishing of Appleton service at the rate of 5 cents per message for "two number" service and 10 cents per message for particular party service. A number of the witnesses who testified expressed the opinion that such an arrangement as this would not be satisfactory because of Appleton being their market town, and of their necessity for unlimited service into Appleton.

The third proposal of the Wisconsin Telephone Company would take care of this situation. This proposal is identical with the second one, except that instead of handling this business on a message rate basis between Greenville and Appleton, unlimited service through the Appleton exchange would be given at the rate of \$3.00 per year per subscriber in addition to the \$15.00 Greenville service rate; that is, all subscribers beyond the four-mile radius from Appleton under the terms of this proposal would secure unlimited Appleton service at \$18.00 per year. For those living between four and five miles from Appleton, this rate would be the same as the regular rate for rural service, with a limited number of subscribers per line and an excess radius charge. For all parties living beyond five miles from Appleton which would apparently include the entire community interested in this case, the rate of \$18.00 per year would be lower than the regular rate with the addition of the excess radius charge. In many ways this third proposal appears to us the best means of handling the situation. The only objection which we would offer to it is that it does not make any provision for those patrons of the locality who may not require unlimited Appleton service. We are not sufficiently familiar with the telephone traffic of this district to know whether all patrons of the locality concerned would require unlimited Appleton service. We believe, however, that the third proposal, with a single modification, will prove the best means of taking care of this situation. This modification would be to the effect that whenever the majority of the patrons on any line extending into the Greenville exchange should elect to take Appleton service upon the toll rate basis outlined in the second proposal rather than upon the unlimited service basis, Appleton service should be furnished to all parties on that line upon a toll rate basis. As long as this principle is not carried to the extent of requiring the option to be given to the individual subscriber of electing either flat rate or toll rate service, we see no objection to it from an operating standpoint, particularly in a small exchange such as the one at Greenville will be. In fact, there are telephone companies

in this State which are giving each subscriber even on loaded lines the choice as to flat rate or toll rate service, and these companies have not reported to us that there is any considerable operating difficulty encountered. One of the larger independent companies in the State furnishes service to one of its small exchanges on exactly the same basis suggested for the Greenville exchange, that is, the subscribers on any line may elect either flat rate or toll rate service for that entire line, and so far as our records show, this company has no difficulty arising from this practice.

The attitude of subscribers in the vicinity of Greenville is apparently one of distrust toward the telephone company, so much so in fact, that a number of subscribers expressed their unwillingness to either accept the company's statement of what the service would cost, or to agree to pay an advanced rate for improved service until after such improvements were actually made. The general opinion seemed to be, however, that if service could actually be put upon the proper basis, subscribers would not be unwilling to pay a slightly increased rate.

All things considered, we do not feel that there is any way of securing a permanently satisfactory settlement of this matter without the establishment of an exchange at or near the village of Greenville, and there seems to be no reason to expect that the Wisconsin Telephone Company can furnish rural service on lines connected to its prospective Greenville exchange at a lower rate than its usual \$15.00 rate. The rate of \$3.00 per year for Appleton service will not be unreasonable for those Greenville subscribers who have a real need for unlimited service through Appleton. For those portions of the locality around Greenville which do not have very much need of Appleton service, the \$3.00 rate might be somewhat too high, but by providing for toll service instead of flat rate service at the option of the majority of the subscribers on any line, this objection appears to be eliminated.

It is, therefore, ordered,

(1) That the Wisconsin Telephone Company shall install an exchange at or near the village of Greenville and connect

with this exchange by lines with not to exceed 10 subscribers per line, all parties desiring telephone service who are outside of the four-mile limits from Appleton and from Hortonville.

(2) That the Wisconsin Telephone Company shall provide a sufficient number of trunk lines between Greenville exchange and Appleton exchange to handle adequately all traffic passing between these exchanges.

(3) The rate for rural service at the Greenville exchange shall be \$15.00 per telephone per year, with an addition of \$3.00 per telephone per year for unlimited service through the Appleton exchange.

Whenever the majority of subscribers on any line connected to the Greenville exchange shall so choose, a message rate of 5 cents on a "two number" basis and 10 cents on a particular party basis shall be substituted for the unlimited service rate of \$3.00 per telephone per year for Appleton service.

August 1, 1915, is considered a reasonable time limit for compliance with the terms of this order.

Dated at Madison, Wisconsin, this twenty-ninth day of March, 1915.

IN THE MATTER OF THE INVESTIGATION ON MOTION OF THE
COMMISSION OF THE ALLEGED VIOLATION OF CHAPTER 610
OF THE LAWS OF 1913 BY THE WESTBORO TELEPHONE COM-
PANY.

U — 410.

Decided March 31, 1915.

Extension of Lines into Occupied Field Without Due Notice to Occupying Company Unlawful — Completed Extensions Not Made in Accordance with Law Treated as Proposed — No Duty on Commission to Notify Occupying Company of Proposed Extension into its Territory by Another Company — Establishment of Physical Connection Recommended.

The Commission, on its own motion, investigated an alleged violation of the anti-duplication section of the public utility act.

The Whittlesey Telephone Company had built a line from Whittlesey

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to Chelsea, a village about equidistant from Whittlesey, Rib Lake and Westboro. Subsequently, the Westboro Telephone Company filed notice with the Commission of a proposed extension "to Chelsea," but failed to serve notice on the Whittlesey Telephone Company. Later that company complained that its rights were being encroached upon in the village of Chelsea by the Westboro Telephone Company in violation of the provisions of the public utility act.

The residents of Chelsea desired telephone service, but their preference, the ordinary index as to whether a telephone company should be allowed to extend its lines into a new territory, was so doubtful and based upon considerations of so little importance, that it afforded no guide. The village was not tributary to any of the villages having telephone companies and there were no rival claims to its trade or social interests made by any of the other towns in the vicinity.

Held: That it was the duty of the Westboro Telephone Company to give the Whittlesey Telephone Company notice of its proposed extension, that notice to the Commission was not sufficient, and that the Commission was under no obligation to notify the Whittlesey company.

That it has been the disposition of the Commission to regard extensions completed without observance of all the requirements of the statute as though they were merely being proposed, and to allow them to remain, if they were such as would have been permitted to be built had all the statutory steps been taken.

That as the Commission could not say that it would have authorized the construction of this line had the Whittlesey company been duly served with notice of the proposed extension and been given an opportunity to raise its objection before the construction of said line, the line must be considered as being without lawful authority.

That in the interests of adequate telephone service throughout the vicinity of Chelsea, it is desirable that some sort of connection be made at Chelsea between the lines of the Whittlesey, Westboro and Rib Lake companies under the provision of the physical connection statute.

OPINION AND DECISION.

The village of Chelsea lies in the northeast corner of the town of Chelsea in Taylor County, Wisconsin, about equidistant from the villages of Whittlesey on the south, Rib Lake on the northeast, and Westboro on the north. It is not incorporated as a village, being merely a small hamlet on the line of the Minneapolis, St. Paul and Sault Ste. Marie Railway. A line of the Whittlesey Telephone Company terminates in the village, giving service to two subscribers. This line was built to Chelsea in the fall of 1913, after due

notice to the Commission and to the other telephone companies operating for local service in the town, the notice stating that the line was to be built "in the village of Chelsea."

On February 18, 1914, the Westboro Telephone Company filed notice with the Commission of a proposed extension "to Chelsea," the proposed line to come down from the north through the town of Westboro. Chelsea is situated just over the town line in the town of Chelsea. Notice of the proposed extension of the Westboro Telephone Company was served by the company upon the Wisconsin Telephone Company and the Ogema Telephone Company which appear to be operating for local service in the town of Westboro. No notice was served upon the Whittlesey Telephone Company, which does not extend into the town of Westboro.

In September, 1914, the latter company complained to the Commission that its rights were being encroached upon in the village of Chelsea by the Westboro Telephone Company, in violation of the provisions of Chapter 610 of the Laws of 1913. The Commission thereupon entered into an investigation of the situation, and a hearing was held at Chelsea on October 16, 1914.

Mr. J. W. Kaye appeared for the Westboro Telephone Company. *Mr. M. C. McNamar* for the Whittlesey Telephone Company, and *Mr. C. R. Claussen* for the Rib Lake Telephone Company, which was interested in the hearing by reason of its intention of building into Chelsea which it now approaches within a mile or two.

The situation presented is a troublesome one. The residents of the village of Chelsea should have some sort of telephone service, but an effort to inquire into the question of which telephone company gives the service most suited to the needs of the residents met with little success. Various opinions were expressed by various individuals, most of them based on considerations that in themselves were of little importance. The inquiry showed merely that telephone service of some character was desired. If a preference could be detected it was for the service which would

give them connection with Medford, the county seat. This, of course, can be provided only through an arrangement between the Medford Telephone Company and the company that ultimately gives service in Chelsea.

The preference of the prospective subscribers which is ordinarily the index as to whether or not a telephone company should be allowed to extend its line into a new territory, affords no guide in this case. If the territory were entirely a farming community tributary to one or the other of the towns between which it lies, the company radiating from the town in which the business, educational and social interests of the rural residents center would be the one which should serve the region. But the territory being considered in this case is not rural. It is a village, constituting a complete entity in itself, and there are no rival claims to its trade or to its social interests made by any of the other towns in its vicinity. If its residents have paramount interests in any direction they are probably to the southward toward the county seat.

As the farming territory about the town develops there will probably be many settlers to the north in the territory served by the Westboro Telephone Company, to the south in the territory served by the Whittlesey Telephone Company, and to the east in the territory served by the Rib Lake Telephone Company, whose business and social interests will be in Chelsea. These settlers will demand, and will be entitled to, service that gives them connection with their business and social center. It is possible that even present subscribers of the telephone lines now approaching the village will some day desire service that connects them directly with Chelsea rather than with the towns from which they are at present receiving service. The company that is then giving service in Chelsea will be called upon to make extensions from the village to give service to the farmers demanding it. These remarks are made to indicate that the Commission is not unmindful of the delicacy of the situation, and to point the recommendation hereinafter made of physical connection at Chelsea between all of the companies concerned.

It has been stated that the Whittlesey Telephone Company was first to install telephone service in Chelsea, and that the authority of that company to extend into the village was secured in a lawful manner. It was the intention of the Westboro Telephone Company to extend into Chelsea, and notice was served on the Commission that the extension was to approach Chelsea. The company omitted, however, to serve notice in writing on the Whittlesey Telephone Company. The Commission was aware that the Whittlesey Telephone Company was already giving service in Chelsea, but, even if we had construed the notice of the Westboro Telephone Company as meaning that they intended to build into Chelsea for local service, the law places no obligation upon the Commission to notify companies of proposed extensions by other companies into their territory. It is the duty of the proponent company to give the statutory notice. To make an extension without having fulfilled all of the requirements is to make it at the risk of having the law invoked by the company whose territory is invaded. Such is the situation in the present case. It is one whose occurrence has not been infrequent since the passage of the Anti-Duplication Act, but which we trust will occur with less frequency as the companies become more familiar with the law.

It has been the disposition of the Commission to regard extensions completed without observance of all the requirements of the statute as though they were merely being proposed, and to allow them to remain if they were such as would have been permitted to be built had all the statutory steps been taken. The evidence in this case, however, does not indicate that the Westboro Telephone Company would have been permitted to make the extension into Chelsea had the Whittlesey Telephone Company been given an opportunity to object.

It appeared at the hearing that the Rib Lake Telephone Company was desirous of extending its lines for local service into the village of Chelsea. The decision in the instant case disposes also of the proposal of that company. In the

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interests of thorough telephone service throughout the vicinity, however, it is desirable that some sort of connection be made at Chelsea between the three companies concerned. Ample provision is made for the extension of lines for that purpose by Section 1797m-74 and Section 1797m-4 of the Statutes. It would be well if an arrangement could be made between the companies for an exchange of service at Chelsea under the provisions of these Statutes.

In view of the facts discussed in the decision the Commission cannot say that had the Whittlesey Telephone Company been duly served with notice of the proposed extension of the Westboro Telephone Company into the village of Chelsea and been given an opportunity to raise its objection before the construction of the line, the Commission would have permitted the line to be built.

We are unable to give sanction to the existence of lines the construction of which we would not have authorized had all of the facts been before us in the first instance. The lines of the Westboro Telephone Company so far as they give local service in the town of Chelsea must therefore be considered as being without lawful authority.

Dated at Madison, Wisconsin, this thirty-first day of March, 1915.

In re APPLICATION OF THE UNION TELEPHONE COMPANY FOR
AUTHORITY TO INCREASE ITS RATES, TOLLS AND CHARGES.

U — 415.

Decided April 19, 1915.

**Increase in Rates Authorized — Increase in Charges for Extension Sets
and Desk Sets Denied — 14 Per Cent. Allowed for Rate of
Return and Reserve for Depreciation — Discount for
Prompt Payment Authorized.**

The petitioner sought authority to increase its rates, claiming that the revenues from the present rates were inadequate. The Commission investigated the operating revenues and expenses of the company under the old rates and also computed the probable revenues and expenses under the new rates. In its computation of the probable operating expenses an allowance of 14 per cent. of the fair value of the property was made for interest and reserve for depreciation.

Held: That on the whole the rates asked for were reasonable, but there was no necessity for an increase in rates for extension sets or for desk sets;

That gross rates should be 25 cents higher than net rates, the net rates to apply when payments were made on or before the fifteenth of each month following the month for which service was rendered.

OPINION AND DECISION.

The petition in this matter was filed with the Commission on January 7, 1915. Petitioner is a public utility operating a telephone system at Prairie du Chien. The petition sets forth the legal rates of the utility as follows:

Single-party business	\$1 50 per month
Two-party business	1 25 per month
Single-party residence	1 25 per month
Two-party business and four-party residence.....	1 00 per month
Extension telephones	50 per month
Extension bells	10 per month

Petitioner alleges that present rates are inadequate to maintain the exchange in the condition necessary to give first class service, and pay interest on the investment, that it has become necessary to employ an additional operator, that officers of the company have received little or no pay for their services in order that the company might pay a small dividend, and that if adequate provision were made for depreciation the company would not be able to pay dividends, even if officers do not receive much salary. It is also alleged that service is good.

Petitioner asks for authority to increase its rates and put in effect the following schedule:

Single line business.....	\$2 25 per month
Two-party business, divided circuit ringing.....	2 00 per month
Single line residence.....	1 75 per month
Two-party residence, divided circuit ringing.....	1 50 per month
Four-party residence, harmonic ringing.....	1 25 per month
Extension telephones	75 per month
Extension bells	25 per month
Desk telephones additional rate.....	25 per month

All telephone rentals to be subject to a 25 cent discount if paid on or before the tenth day of each month, following the month the service was given. All rentals payable at the office of the company.

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On February 2, 1915, a protest signed by about 100 parties was filed with the Commission and the Commission was notified by the city attorney that the city of Prairie du Chien, as a user of telephone service, also protested against the increase of rates.

Hearing was held at Madison, February 3, 1915. *J. A. Murray*, superintendent, and *O. W. Sherman*, secretary and treasurer, appeared for the company. There was no appearance in opposition. None of the matter dwelt upon at the hearing need be reviewed here, as the material facts are disclosed in the following discussion of the operating conditions of the company. It should be mentioned, however, that the records of the company show that a few of the signers of the protest mentioned above are not users of telephone service, and that, of the others, 47 use four-party residence service and would not be affected by the proposed increase, except in case their bills were not paid within the discount period.

The Union Telephone Company operates a local exchange in the city of Prairie du Chien, and in addition, serves a very small number of rural subscribers on its own lines, and does switching work for a limited number of parties on foreign lines.

Following is a statement of revenues and expenses for the periods indicated:

	Year ended June 30, 1913	18 months ended De- cember 31, 1914
<i>Operating Revenues</i>		
Exchange telephone earnings.....	\$4,812 40	\$8,238 05
Earnings from connecting lines.....	924 01	1,531 72
Miscellaneous exchange system earnings..	73 32	119 28
TOTAL OPERATING REVENUES.....	\$5,809 73	\$9,889 05
<i>Operating Expenses</i>		
Central office	\$1,995 50	\$2,878 27
Wire plant	453 65	717 76
Substation	131 13	493 75
Commercial	4 50	115 81
General	224 42	1,131 28
Undistributed	89 80	183 89
	\$2,899 00	\$5,520 76
Depreciation	1,455 87	2,383 31
Taxes	137 64	172 07
TOTAL OPERATING EXPENSES.....	\$4,492 51	\$8,076 14
NET OPERATING REVENUE.....	\$1,317 22	\$1,802 91
Non-operating revenue	189 84	.....
GROSS INCOME	\$1,507 06	\$1,802 91

The company has reported to the Commission that the cost of its property and plant, on June 30, 1913, was \$22,829.97 and on December 31, 1914, \$24,257.23. Lines are metallic and a central energy switchboard is in use. Following is a summary of the number of telephones of each class as shown by the company's records, for the dates indicated:

Date	1-party busi- ness	2-party busi- ness	1-party resi- dence	2- and 4-party residence	Ex- tension Rural 'phones	Ex- tension bells	Special
January 1, 1914....	103	7	17	250	3 13	6	Court-house, 1 main, 3 ex- tensions; high school, 1 main
December 1, 1914...	102	16	30	252 { 48-2-party 204-1-party }	11 12	6	Court-house and high school as above.

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Although the foregoing table does not show the average number of 'phones of each class for the 18 months' period ended December 31, 1914, it indicates that it will be fair to base computations of probable increase of revenues upon approximately the following average number of installations for each of the classes which would be affected by the proposed net rates.

TABLE SHOWING EFFECT OF PROPOSED NET RATES FOR 18 MONTHS ENDED
DECEMBER 31, 1914

<i>Class</i>	<i>Present rate</i>	<i>Proposed net rate</i>	<i>Proposed increase in net rates</i>	<i>Average number of installa- tions</i>	<i>Effect of pro- posed increase in net rates on 18 months' revenue</i>
1-party business	\$18 00	\$24 00	\$6 00	102	\$918 00
2-party business	15 00	21 00	6 00	10	90 00
1-party residence	15 00	18 00	3 00	22	99 00
2-party residence	12 00	15 00	3 00	48	216 00
Extension 'phones	6 00	9 00	3 00	12	54 00
Extension bells	1 20	3 00	1 80	6	16 20
TOTAL INCREASE IN 18 MONTHS' REVENUE					\$1,393 20

Because of the fact that the average number of installations used may not be, strictly speaking, a correct average for the 18 months, the effect which rates as proposed would have had on operating revenues might not be exactly as shown above. However, when we consider that the changes in rates would almost certainly lead to many changes in the classification of subscribers, because subscribers would choose lower grades of service at the lower rates, \$1,393.20 can undoubtedly be accepted as the maximum amount by which the revenues of the last 18-month period would have been increased by the application of the proposed rates. This being so, the amount available for interest and depreciation for the 18 months would have been \$5,589.42. The fair value of the property, although no detailed appraisal has been made, is probably not far from \$24,000. Interest and depreciation at 14 per cent. per year on such value would amount to \$5,040 in 18 months.

This brings us to the contention of the company that operating expenses have been lower than they can be expected to continue. The total average number of telephones

operated during the 18-month period may be stated with certainty to have been very nearly 400, exclusive of extensions, foreign rural 'phones, etc. During the 18-month period under consideration, the expenses per telephone were, therefore, approximately \$13.80, or \$9.20 per year. Inclusive of taxes, these unit costs were, respectively, \$14.23 and \$9.49. Although it may be true that the company has not paid very large salaries to its officers, the average expense per telephone during the last period reported appears to have been about normal and we do not believe that much allowance should be made for increased operating expenses. This is not meant to include taxes which apparently are not reported for the full 18 months in the last report. With full allowance for taxes, the proposed rates would apparently have produced about \$450 more than absolutely required, during the 18-month period, if such rates had been in effect. This, however, does not take into consideration the probable shifting in classes of service caused by subscribers choosing the cheaper grades. The exact extent of such shifting cannot be foretold, but it would probably be of some importance, among the patrons using business service, where there are very few two-party subscribers at present. As most of the residence subscribers are at present using party line service, it is hardly to be expected that much shifting would result among residence subscribers.

On the whole, the rates asked for appear reasonable, but there are certain portions of the application which should be denied. There seems to be no necessity for an increase in rates for extensions 'phones and extension bells. With regard to desk sets, the company contends that they are more expensive to maintain than wall sets and so should carry a higher rate. The rates asked for, however, appear to be high enough to cover the cost of supplying service through desk telephones and no additional rate will be approved in this case. Other rates will be approved as applied for, except for the change in the discount period, covered by the following order.

It is, therefore, ordered, That the applicant, the Union Telephone Company, may discontinue its present rates and substitute therefor the following schedule:

	<i>Monthly Rates</i>	
	<i>Gross</i>	<i>Net</i>
One-party business	\$2 25	\$2 00
Two-party business	2 00	1 75
One-party residence	1 75	1 50
Two-party residence	1 50	1 25
Four-party residence	1 25	1 00
All other rates to remain as at present.		

The net rates shall apply when payment is made on or before the fifteenth of each month, following the month for which service was rendered. Bills for service shall be payable at the office of the company and the gross rate shall apply when payments are not made by the fifteenth of the month, following the month for which service was given.

Rates as authorized in this decision may be made effective for service rendered May 1, 1915.

Dated at Madison, Wisconsin, this nineteenth day of April, 1915.

J. A. KESTEL *et al.* v. MARSHFIELD RURAL TELEPHONE COMPANY AND STRATFORD TELEPHONE COMPANY.

U — 416.

Decided April 20, 1915.

Re-establishment of Physical Connection Ordered — Flat Rate and Message Basis for Interchange of Service Fixed.

Complainants sought the restoration of a physical connection formerly existing between the defendant companies. Neither company objected to the re-establishment of the connection and the only matter to be settled had to do with the terms of said connection.

The Stratford company operated an exchange at Stratford and the Marshfield Rural company operated an exchange at Rozellville. Each exchange had approximately the same number of subscribers directly connected and the messages sent in each direction were approximately equal in number. In the territory between Stratford and Rozellville, subscribers of the two companies were not separated by any distinct line,

and consequently the requirement was for unlimited service between the systems.

Held: That the terms for connection should be so fixed that subscribers needing unlimited service between the two systems would be able to obtain such service, and that others could have such limited service as they might require, upon a message basis.

That if the rates of the companies for exchange service were such as to make the extension of unlimited service over both systems a reasonable requirement, connection might be ordered without making the cost of such connection fall selectively upon those to whom the connection furnished an important part of their exchange service; but considering the financial conditions of the companies and considering the present exchange rates, it would not be reasonable to require unlimited interchange of service with no direct charge for the service.

Ordered: That the connection which had been made during the hearing should be maintained.

That considering the necessity of each company securing revenue sufficient to compensate it for the service rendered, and also considering that the conditions under which the companies operate are such that the subscribers should have the service of both systems on terms as favorable as possible to unrestricted interchange of service, the subscribers of either company desiring unlimited service over the lines of the other company should be furnished such service upon the payment by each such subscriber of \$2.00 per year to the company of which he is a subscriber.

That a charge of 5 cents should be made for each message passing over the connecting line, originated by any party not entitled to receive unlimited service, this message charge to be collected by the company on whose lines the message originated.

That all revenues obtained from the flat rate charged and from the message rate charged, should be divided equally between the companies concerned.

That each company should keep the other company supplied with a complete and up-to-date list of patrons entitled to receive unlimited service.

That settlements of accounts should be made quarterly.

That each company should adopt and file with the Commission reasonable rules for enforcing the provisions of this order.

OPINION AND DECISION.

Complaint in this matter was filed with the Commission February 26, 1914. Complainants are residents in the vicinity of Rozellville and Stratford, some of whom are patrons of the telephone companies concerned. Complainants ask that physical connection formerly existing between the com-

panies concerned be restored at such terms as the Commission may direct.

Hearing was held at Madison, April 21, 1914. On behalf of the Marshfield Rural Telephone Company, which has really joined in asking for the restoration of the connection, appearances were: *J. A. Kestel*, *J. C. Marsh*, and *J. H. Brinkman*. *E. H. Maxon* appeared for the Stratford Telephone Company.

At the hearing it developed that neither of the companies objects to the re-establishment of connection, and that the only matter to be settled has to do with the terms for such connection. At the hearing representatives of the companies agreed to re-establish the connection with the understanding that the terms prescribed by the Commission should apply from the date on which reconnection was made.

From the records in the case, it seems that at the time of the hearing the Stratford Telephone Company had about 95 subscribers and the Marshfield Rural company had about 160 subscribers. The Stratford company has an exchange at Stratford and the Marshfield Rural company has an exchange at Rozellville, about seven miles from Stratford. Not all of the subscribers of the Marshfield Rural company, however, are connected directly with the Rozellville switchboard. Part are on lines running directly to Marshfield and these subscribers get their principal central office service from the Marshfield telephone exchange. Between 90 and 100 of the Marshfield Rural subscribers were connected directly to the board at Rozellville at the time of the hearing, so that the exchanges at Rozellville and Stratford were approximately equal in size.

It appears that Stratford is a railroad station but that Rozellville is an inland village. Consequently, subscribers on the Marshfield Rural lines find service to Stratford of considerable value. In the rural territory between Rozellville and Stratford the subscribers of the two companies are not separated by any distinct line, and, as a consequence, the requirements of parties on neighboring farms

are often for unlimited service between the systems of the two companies.

The representative of the Stratford company took the position that the service was of more value to the Marshfield company than to his company, and that consequently his company should be paid by the Marshfield company for expenses incurred by it in maintaining the connection, but that it should not be required, in turn, to reimburse the Marshfield company for expenses incurred by it. The principles involved in this situation have been discussed quite fully by the Commission in a recent decision involving physical connection of lines at the city of Shullsburg (*Belmont and Pleasant View Telephone Company v. LaFayette County Telephone Company*.^{*} Vol. 16, W. R. C. R., March 2, 1915) and it does not seem necessary to review them at this time. It may be said, however, that even were most of the traffic to terminate on the Stratford lines, that would not establish the fact that Rozellville subscribers are the only ones benefited by the connection or that the benefits derived by them are so much greater than those enjoyed by Stratford subscribers that the Marshfield Rural company should bear its own expenses resulting from connection and the expenses of the Stratford company in addition. The relative benefits of such connection to the two parties who must be concerned in every telephone conversation are hard to measure quantitatively, and even if all of the traffic were in one direction that would not prove that only one company was benefited.

In the present case, however, it does not seem that there is any great difference in the amounts of Rozellville traffic originating and terminating with the Stratford company. A record kept by the Marshfield Rural company for nine days, April 22 to 30, 1914, inclusive, showed 60 messages from Stratford to Rozellville and 58 messages in the reverse direction. The same company's record for six days in March, 1915, shows 85 messages from Rozellville to Strat-

^{*} See Commission Leaflet No. 41, p. 1251.

ford and 81 from Stratford to Rozellville. The Stratford company found that for a period of four days, 36 messages originated at Stratford and 43 originated at Rozellville. From such facts as are available it seems that the total number of messages from Rozellville to Stratford may be somewhat larger than the number sent in the opposite direction, but the preponderance of traffic toward Stratford is not so great as to indicate that the connection is altogether, or even chiefly, for the benefit of the Marshfield Rural company, even if we were to accept the direction of traffic as conclusive evidence as to the incidence of the benefits resulting from such traffic.

It seems to be conceded that a connection on a toll rate basis would not meet the requirements of the situation, at least with reference to a considerable portion of the subscribers of each company. Whether the situation can be held to be such that the cost of connection should be considered a cost of exchange service for all subscribers of both companies is more difficult to determine as there is nothing in the record to show what classes of subscribers use the physical connection most frequently. We are inclined to believe, in the light of such facts as are available, that the terms for connection should be so fixed that subscribers needing unlimited service between the two systems would be able to obtain such service, and that others could have such limited service as they may require upon a toll basis. If the rates of the companies for exchange service were such as to make the extension of unlimited service over both systems a reasonable requirement, connection might be ordered without making the cost of such connection fall selectively upon those to whom this connection furnishes an important part of their exchange service. With conditions as shown in the last reports filed by these companies and with rates as they are, it seems hardly reasonable to require unlimited interchange of service with no direct charge for the service.

The records do not show precisely what part of the expense of constructing the connection line has been borne by

each company. In fact, the statements as to the amount of line built by each company appear to be somewhat conflicting. It seems, however, that approximately half of the connecting line was constructed by each company.

Because of the fact that the order in this case will change the conditions under which service is being exchanged by the companies it is impossible to state in advance just what revenue each company will derive from the application of the terms fixed in this order. If the revenue produced should prove to be inadequate, a revision of the terms may be made after practical experience has shown the exact effect of this order. In fixing the terms for interchange of service we have considered the necessity of each company securing revenues sufficient to compensate it for the service rendered and also the fact that conditions under which the companies operate are such that subscribers should have the service of both systems at terms as favorable as possible to unrestricted interchange of service.

From an operating standpoint the objections which might be offered to such practices as those prescribed by this order might be of some importance in a large exchange, but in small exchanges such as those at Rozellville and Stratford the operating difficulties should not be sufficiently serious to prevent the adoption of the practice outlined in the order.

With regard to the stipulation that the terms fixed by the Commission in this case shall apply to service rendered from the date of the re-establishment of the connection to the effective date of this order, the difficulty arises that the terms to be fixed for future service are such that it would be impossible to apply them to service already rendered. Under these conditions it seems that settlement for the period in question might well be made on the basis offered by the Marshfield Rural Telephone Company, *i. e.*, by payment to the Stratford company at the rate of \$60.00 per year. As the service has been unquestionably of great benefit to the Stratford company's subscribers, we do not feel that we should recommend that the Marshfield Rural

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company should pay at a rate greater than \$60.00 per year for service already rendered.

It is, therefore, ordered,

1. That the connection between the systems of the Marshfield Rural Telephone Company and the Stratford Telephone Company shall be maintained.

2. That the subscribers of either company desiring unlimited service over the lines of the other company shall be furnished with such service upon the payment by each such subscriber of \$2.00 per year to the company of which he is a subscriber.

3. That a charge of 5 cents shall be made for each message passing over the connecting line, originated by any party not entitled to receive unlimited service under Section 2 of this order. This message charge shall be collected by the company on whose lines the message originated.

4. That all revenues obtained under the provisions of Sections 2 and 3 of this order shall be divided equally between the companies concerned.

5. That each company shall keep the other company supplied with a complete and up to date list of its patrons who are entitled to receive unlimited service, and that settlements of accounts between the companies under this order shall be made quarterly, unless both shall agree to some other plan.

6. That each company may adopt and file with the Commission reasonable rules for enforcing the provisions of this order.

7. Rates as fixed in this order shall become effective May 1, 1915, and it is recommended that for the use of the connection from the date of its re-establishment in 1914 to May 1, 1915, the Marshfield Rural Telephone Company shall pay to the Stratford Telephone Company at the rate of \$60.00 per year.

Dated at Madison, Wisconsin, this twentieth day of April, 1915.

PART II.

SELECTED COMMISSION ORDERS, RULINGS AND DECISIONS OF INTEREST TO TELEPHONE AND TELEGRAPH COMPANIES.

CALIFORNIA.

Railroad Commission.

ORO ELECTRIC CORPORATION *v.* RAILROAD COMMISSION *et al.*

Commission's Orders Affirmed by Court.

On February 24, 1915, the Supreme Court of California handed down a decision affirming the Commission's orders of April 29, 1913 (see Commission Leaflet No. 19, p. 206) and August 15, 1913 (see Commission Leaflet No. 23, p. 195) refusing the Oro Electric Corporation a certificate of public convenience and necessity to operate in the city of Stockton and certain adjacent territory. (147 Pac. 118.)

OKLAHOMA.

Corporation Commission.

CITY OF EL RENO v. EL RENO GAS AND ELECTRIC COMPANY.

Case No. 1943 — Order No. 890.

Decided January 26, 1915.

**Reduction in Rates Refused where Present Revenues are Not Greater
than Necessary to Care for Reserve for Depreciation and Fair
Return upon Investment.**

APPEARANCES:

For the complainant: *P. P. Duffy*, mayor.

For the defendant: *Paul Reiss*, attorney.

OPINION AND ORDER.

By the Commission:

The complaint in this case was filed by order of the board of commissioners of the city of El Reno, which board acted upon petition signed by twenty citizens. The petition alleges that the rates for artificial gas in El Reno is \$1.50 per thousand cubic feet; that the rate is exorbitant and more than is charged for a like commodity in any of the cities in Oklahoma; that at Enid, the rate is \$1.25 per thousand less a discount of 25 per cent. if paid before the tenth of the month; and asked that the Commission establish reasonable rates.

The case was submitted upon the following agreed statement of facts:

"It is agreed that this case may be taken as submitted subject to the following agreement:

"*First:* It is agreed that the rates in Enid for gas are as per schedule of rates on file with the Corporation Commission not in excess of \$1.25 per thousand cubic feet.

"*Second:* That the rates for gas in McAlester are as per the schedule of rates on file with the Commission not in excess of \$1.25 per thousand cubic feet.

"*Third*: That the rate for gas in El Reno is as per the schedule of rates on file with the Commission not in excess of \$1.50 per thousand cubic feet.

"*Fourth*: That the El Reno Gas and Electric Company will within ten days from the date thereof file with the Commission a verified statement of the following:

"(a) Gross receipts from the sale of gas in El Reno.

"(b) Operating expenses as to the gas business in El Reno.

"(c) Value of property devoted to the gas business in El Reno.

"Such statement to be subject to verification by the Commission if in its opinion any further verification is necessary.

"It is also agreed that the gas plant in Enid is known as a "water gas" set and the one in El Reno is a "coal gas" set.

(Signed)

PAUL REISS,

For the El Reno Gas and Electric Company.

P. P. DUFFY,

Mayor, City of El Reno, Oklahoma.

As per the above agreed statement, the defendant filed its gross receipts, its operating expenses, and the report shows the book value of the property. * * *

This statement shows the net operating revenue for the year 1910 of \$7,316.85, after expenses and taxes are deducted, and for the year 1914, the net operating revenue is \$4,371.41. This amount is the net revenue without deducting anything for depreciation or interest on investment. The Gas company, under the agreement, filed a statement with the Commission that the reproduction value of the gas plant at El Reno was \$156,355. The Commission did not investigate this report to ascertain its correctness, but assuming that the value of the plant is only two-thirds of what it is reported to the Commission, or \$100,000, the net earnings appear to be insufficient to pay for the interest on the investment and to allow for reasonable depreciation of the plant. Depreciation of gas plant means a sufficient amount set aside each year to replace the main parts of the property when the same shall have deteriorated from causes other than operation. That is, gas mains under ground will probably last from fifteen to twenty-five years depending upon the character of the soil in which they are placed.

In the Supreme Court of the United States in the *Knoxville Water Case*,* Mr. Justice Moody said:

"Before coming to the question of profit at all, the company is entitled to earn a sufficient sum annually to provide not only for current repairs but for making good the depreciation and replacing the parts of the property when they come to the end of their life. * * * It is not only the right of the company to make such a provision, but it is its duty to its bond- and stockholders, and, in the case of a public service corporation at least, its plain duty to the public."

The proper rate of depreciation on gas pipes and other portions of the machinery depends entirely upon the location of the same with reference to the action of the mineral substance with which it comes in contact under ground, and the duration of the boilers and other apparatus depends more or less on the character of water used therein. In the western part of the State, gyp water is used in boilers and they deteriorate very rapidly. A depreciation less than 4 per cent. has not been allowed in any case. This assumes that all parts of the plant must be renewed within twenty-five years. This of course does not include the temporary renewals or repairs from year to year.

Assuming the value of the plant to be \$100,000, there should be set aside each year the sum of \$4,000 for depreciation; interest on the investment at not less than 6 per cent., which would be \$6,000 per year. It should not be inferred from this that the Commission is passing upon the proper rate of depreciation for the El Reno plant or the proper interest which it should be entitled to receive, but is using the minimum allowed in any case.

It is contended that the rate for artificial gas in Enid is \$1.00 per thousand; also in McAlester \$1.00 per thousand. McAlester and Enid have a minimum charge of \$1.00 per month regardless of the amount of gas used, while in El Reno the minimum charge is 25 cents. That is, 25 cents for the first one hundred cubic feet or less. The average number of subscribers in the El Reno plant last year was 952; the total income \$23,589; this produces an average monthly gas bill to each consumer of \$2.06. At Enid, with the minimum charge of \$1.00 per month and 1,525 consumers, total

* 212 U. S. 1, 13-14.

income of \$38,234, the average monthly gas bill to each consumer is \$2.09, or 3 cents more than at El Reno. At McAlester, with \$1.00 minimum, and 649 consumers, total revenue was \$27,131, the average per consumer is \$3.49 per month.

This analysis seems to indicate that the minimum charge of \$1.00 per month increases the cost somewhat. While the cost per subscriber at Enid and McAlester is greater than at El Reno, this may be explained by the fact that the consumers at those places may in fact use more gas than at El Reno, and it may partly be due to the minimum charge.

It is claimed that the gas at Enid is generated by a different process, known as "water gas" produced largely from crude oil, while at El Reno and at McAlester, the gas is produced from coal.

Regardless of whether the rates produce a sufficient revenue to pay an income on investment, they may be unreasonable. When a plant is not making a sufficient revenue to pay depreciation and interest on the investment, it should be permitted to charge any reasonable rate that will produce the greatest net revenue. We have some doubt as to whether the rate in El Reno does in fact produce more net revenue than a lower rate would produce. If the rate were only two-thirds of what it now is, the consumers would consume more gas and there would be more gas consumers. If an increased number of consumers and the distributing of an increased amount of gas would not require the facilities to be extended, it would doubtless have the result of producing a greater net revenue. However, this is problematical so far as the record in this case is concerned and is only mentioned here as a suggestion.

From the facts introduced in this case, by agreement, upon which the Commission must decide the same, we are clearly of the opinion that the net revenues are not greater than are necessary to care for proper depreciation and interest on the investment.

The complaint will be dismissed without prejudice, and upon application of the complainant the case will be reopened and further investigated.

Oklahoma City, January 26, 1915.

J. I. CASE PLOUGH WORKS *et al.* v. OKLAHOMA GAS AND ELEC-
TRIC COMPANY.

Cause No. 1987 — Order No. 911.

Decided March 17, 1915.

**Principle of Minimum Charge Approved — Existing Minimum Charge of
Defendant Fixed by Franchise Reduced — Refund Ordered.**

APPEARANCES:

For the complainants, *J. H. Johnston.*

For the defendant, *Paul K. Reiss.*

FINDINGS OF FACT, OPINION AND ORDER.

HENSHAW, Commissioner:

Separate complaints were filed in this case by J. I. Case Plow Works [and several others]; * * *

These complaints were consolidated by agreement and with the understanding that the evidence taken in each case was to apply in all and that the same order would apply in all cases.

The thirty-one complaints allege in substance that the defendant is charging an excessive minimum rate and ask that the same be abolished or reduced to a reasonable charge.

In answer to the complaints, the defendant filed a statement which shows that it has 621 power consumers, and 9,005 lighting consumers. The 621 power meters have a connected total of 1,480 motors, of which 1,065 were alternating current motors and 415 direct current motors. The direct current motors are used principally for elevator service. The total horse-power of connected load is 7,136, of which 3,021 horse-power is on direct current motors.

The defendant further states in its answer that its net revenue from power service is inadequate to pay the proportional part of the expense thereof and to give return on the investment; that to abolish the minimum for power service would have the effect of reducing its revenues until this class of service would be operated at a loss.

The minimum rate for power service now being collected by the defendant is \$1.00 per horse-power for the first 15 horse-power connected capacity or fraction thereof; for the next 15 horse-power, 75 cents per horse-power connected capacity; all in excess of 30 horse-power connected capacity 50 cents per horse-power.

When the complainants were putting in motors for the operation of their business in Oklahoma City, most of them did so with the expectation that the near future would bring an increase in business. The development of the city in business has not been as rapid as anticipated by some, hence motors with greater horse-power capacity than is necessary to operate the plant have been installed and are now in use.

It is contended by the defendant that it must be ready to serve the full connected capacity of all these motors on demand. In determining the justness and equity of minimum rates, the expense of being ready to serve, interest on the investment, and the equipment devoted to the particular class of service, which must be maintained whether any current is actually used or not, must be considered. If all the motor power users of current were to leave their motors idle for one month, a certain amount of bookkeeping would be necessary at the general offices, the interest on this investment for that month must necessarily be paid, and if the same were not paid by the users of this service, it would have to be paid from some other income.

Commissions and courts which have had under consideration the question of minimum rates generally have held that a minimum rate should be collected sufficient to pay all the expense and fixed charges of that part of the plant set apart for the use of the particular service. The contention made by the defendant that it must be ready to serve the complainants in this case to the amount of the maximum capacity of their horse-power is not applied in the practical operation so as to cause the defendant to incur the expense which the connected horse-power capacity would indicate. The operation of an electric light plant this year is based upon the experience of last year. The operation of the

plant to-day is based upon the operation of the plant yesterday. If it to-day grows cloudy and dark, the operator of the plant prepares for the peak load one to two hours earlier in the afternoon than if the day is clear. The operator of the plant knows approximately the amount of current used for power service during the month of December last year, and he prepares for a similar demand during the month of December this year, which calculation may be modified to some extent by any change in local or business conditions. It is something similar to deposits in a bank. The bank stands ready at all times to pay its depositors in cash. The amount of cash it keeps on hand for this purpose is based upon its experience and it keeps a sufficient amount of currency on hand to meet all reasonable demands, yet if all of its depositors were to call for their deposits the same day, the demands may exceed the available cash. If the total horse-power capacity should be demanded of the electric light plant at any one time, it would doubtless exceed the capacity of the plant to give the immediate service on the same theory that a bank could not immediately meet the demands of its depositors.

The question of proper minimum charges has been before commissions and courts in many states. Following is a brief synopsis of some of the important opinions and holdings:

California Railroad Commission:

"This principle must not be carried to the extent of preventing the establishment of any minimum charge, for this latter is based on the necessity of compelling each consumer to bear some part of the burden of furnishing the utility."

Arizona Corporation Commission:

"It is apparent that the respondent is compelled to undertake many expenses that it may serve its various classes of consumers regardless of whether any individual consumer in such classes may, during any particular time, use none of the commodity or varying quantities thereof. Such expense is carried by these non-using consumers and should not be placed upon the other consumers who are taking the service and who must make up the operating expenses, giving the respondent a fair return on its investment over and above all legitimate operating expenses."

Supreme Court of Kansas:

"The council evidently deemed it proper and reasonable to collect 50 cents a month from each patron whether he used gas during the month amounting to that sum or not, on the theory that this minimum sum would pay for reading meters and other service performed by the city in connection with the city, although the amount of gas used in one month might not entitle the city to this sum * * *. It not appearing prima facie unreasonable, but reasonable, it must be upheld." (*Cunningham et al. v. City of Iola*, 119 Pac. 317.)

Massachusetts Board of Gas and Electric Light Commissioners:

"While the minimum charges for power in force may in some instances work some hardship and might perhaps be re-arranged to advantage and while they have little value to the company as producers of actual revenue, they tend to make a fairer adjustment of responsibility for station loads as between customers and should lead to decreasing average costs and so to lower prices."

Supreme Court of Missouri:

"The evident purpose of this rule (minimum rate) was to exact fair compensation from those requiring gas connection and gas furnished at hand, though the amount consumed should be very small, almost nominal. We think it is not unjust or unreasonable. It is a matter of common knowledge that to furnish gas at hand for a very small or nominal consumer, requires the same outlay in the way of meter, periodical inspection and repairs, with weekly or monthly visitations that are required of very large consumers. * * * We hold, then, that the rule or regulation in question is not as a matter of law unreasonable." (*State ex rel. v. Sedalia Gas Light Company*, 34 Mo. Appl. 501.)

St. Louis Public Service Commission (Missouri):

"As the calculation of the maximum rate takes into account the full amount of the customers' charge, the present custom of requiring a minimum bill of \$1.00 per month should not be allowed to continue where the consumer pays the maximum rate. * * * The Commission believes that a minimum bill of 50 cents per month should be required of consumers paying the maximum rate. In all other cases, a minimum bill of \$1.00 is considered just."

New Jersey Board of Public Utilities:

LIGHTING SERVICE.

"The conclusions of the Board, therefore, are:

"*First.* That the exaction of a minimum charge is a reasonable rule or regulation for an electric light company to make;

"*Second.* That the making of this charge by the month is just and reasonable and is really more equitable than if the charge were made by the year;

"*Third.* That a charge of \$1.00 per month 'per plant for installation' is just and reasonable, but that a charge of \$1.00 per meter is excessive where more than one meter is installed. A minimum charge of 50 cents per month per meter, however, is not excessive or unreasonable for each additional meter installed on the same premises for the same customer supplied through the same service; * * *

POWER SERVICE.

"From this comparison it does not appear that a minimum charge of 50 cents per per horse-power per month is excessive or unreasonable. It is undoubtedly true that the exaction of a minimum charge will result in an apparent hardship to a small number of customers who use their equipment but a very short time, in some cases not more than four or five hours per month. The fact must not be lost sight of, however, that the supply of electric power is strictly a commercial proposition and to relieve one customer from the payment of any considerable portion of the cost would merely result in transferring the burden to other customers, and such a transfer does not appear to be justified."

The Board held that 50 cents per horse-power per month was not unreasonable and that the minimum charge made for electric power service, which was \$1.00 per month, was not unreasonable.

New York Supreme Court:

"One consumer with the same number of lamps will use more than another. In both cases the return to the company may be remunerative, or the use of one may be so inconsiderable as to involve a loss. To meet this contingency the monthly minimum charge of \$1.50 is made. But it must be borne in mind that this payment is not in addition to the charge for actual consumption. * * * It is not a penalty for a failure to use defendant's product, but is properly to be regarded as compensatory for that part of the service which is at all times being rendered in the maintenance of the apparatus and connections through which the electric current is made available to the customer for the production of light at his pleasure." (*Gould v. Edison Electric Illuminating Company of New York*, 60 N. Y. Supplement, 559.)

Ohio Laws 1911:

"Nothing in this act shall be taken to prohibit a public utility from providing for a minimum charge for service to be rendered unless such minimum charge is made or prohibited by the terms of the franchise, grant or ordinance under which such public utility is operated."

Bucyrus, Ohio, has a minimum rate of \$10.00 per month net for motors of five horse-power or less, and 20 cents per horse-power for more than five horse-power, prescribed by the Ohio Public Service Commission.

Tennessee Chancery Case 8368:

"We do not think that it can be reasonably contended that it is not competent to charge a minimum rate. We think it is clear from the authorities that the company had a right to fix a fair and reasonable minimum charge for water supplied to any particular resident."

Washington Public Service Commission:

"The Commission is of the opinion that the imposition of a reasonable minimum charge is a reasonable practice which tends to equitably distribute the cost of operating and maintaining the plant. * * * The practice of collecting a minimum charge of this character is sanctioned by custom and authority and is followed by the city of Seattle with respect to its municipally owned water and lighting system."

Wisconsin Commission:

This Commission has considered the subject of minimum rates in several cases:

"The main purpose of the minimum charge is to make it certain that each consumer bears his just share of expenses incurred in supplying service." (*In re Application of Greenwood Municipal Light Plant*, 6 W. R. C. R. 60.)

"It must be borne in mind, however, that the consumers' expenses, such as maintenance of meters, reading meters and delivering bills, etc., are covered by the minimum monthly bill." (*In re Investigation* * * * *Chippewa Valley Railway, Light and Power Company*, * * * *City of Euclaire*, decided November 11, 1912.)*

Monroe, Wisconsin, has a minimum rate of 50 cents per horse-power connected.

Georgia:

The minimum power rate fixed by the Georgia Railroad Commission, in the case of *Macon Railway and Light Company*† is \$1.00 per month for two horse-power or less connected; 50 cents per month for horse-power connected in excess of two horse-power.

* See Commission Leaflet No. 14, p. 206.

† See Commission Leaflet No. 29, p. 1072, 1104.

Illinois:

The minimum power rate authorized by the Illinois Public Service Commission for the city of Springfield, is 50 cents net per month per horse-power of active load. Active load was determined on the basis of considering 90 per cent. of the first five horse-power of connected load active; 70 per cent. of the next five horse-power; 50 per cent. of the next twenty horse-power; 40 per cent. of all over thirty horse-power. Centralia, Illinois, has a minimum rate of 50 cents per month per horse-power connected.

The principle of a minimum rate has been recognized by the municipality of Oklahoma City in the operation of its water plant, by charging a minimum to all water consumers of 75 cents per month.

The charter adopted by the voters of Oklahoma City, known as Ordinance 1118, provides in Section 5 that:

"The grantee shall have the right to make a minimum charge of \$1.00 per month for each kilowatt of lighting capacity and \$1.00 per month for each horse-power of power capacity which any consumer may have connected through said grantee's system or line. *Provided*, such charge shall be made only for those months when the consumption of current by such consumer figured at regular rate or rates shall not be equal to such minimum charge."

It is contended by the defendant that it is only complying with the ordinance which was adopted by the voters of Oklahoma City. The Corporation Commission, however, may alter rates established by franchise.

In the case of the *Pioneer Telephone and Telegraph Co. v. State*, 33 Okla. 724, the Court said:

"Relying on such grant of governmental power by the legislature to the city, appellant cites subdivision 20 of Section 512, Wilson's Revised and Annotated Statutes 1903, where it is claimed cities of appellant's class are vested with power to authorize the construction and maintenance of street railways, water mains and water pipes, and gas mains and gas pipes, electric light and telephones wires, along or through the streets and alleys within the corporate limits and to grant franchises and rights to persons, associations or corporations for such purposes, and to regulate the same, * * * all shall be subject to the reasonable regulations

by ordinance * * * and insists that the power to fix said rates was thereby granted to the city; and that the right to change the rate from the lower to the higher, and to charge the rates complained of, was granted by the city to the appellant under the municipal franchise contained in the ordinance; and that the same is protected by that part of Article 9, Section 18 of the Constitution which reads: 'That nothing in this section shall impair the rights which have heretofore been or may hereafter be conferred by law upon the authorities of any city, town or county to prescribe rules, regulations or rates of charge to be observed by any public service corporation in connection with any services performed by it, under a municipal or county franchise, granted by such city, town or county, so far as such services may be wholly within the limits of the city, town or county granting the franchise.'

"Assuming, but not deciding, that subdivision 20 of Section 512, *supra*, is applicable to cities of the first class, we cannot agree with appellant that thereby the power to fix telephone rates was granted by the Legislature to the city. All that was thereby granted to the city pertinent to this case is apparent on its face, which is the power to authorize the construction and maintenance * * * [of] telephone wires along or through the streets and alleys within the corporate limits and to grant franchises and rights * * * [to] corporations for such purposes and to regulate the same. * * *"

Section 7, of Article 18, of the Constitution reads as follows:

"No grant, extension or renewal of any franchise or other use of the streets, alleys or other public grounds or ways of any municipality shall divest the State or any of its subordinate subdivisions of their control and regulation of such use and enjoyment; nor shall the *power to regulate the charges for public service* be surrendered; and no exclusive franchise shall ever be granted."

Chapter 93, Session Laws of 1913, page 150, confers jurisdiction upon the Commission to fix rates, prescribe regulations, service and practice of water, heat, light and power companies and gives the Commission general supervision over such utilities.

Whether the minimum rate provided in the franchise was reasonable, depended upon the conditions that existed at the time the franchise was adopted by the people. The Commission must now determine the reasonableness of this minimum rate under the conditions and facts disclosed by the evidence in this case.

We have made an extensive investigation as to the rates charged in other cities of the country and we find that in a great majority not less than \$1.00 per month per horse-power is the customary and usual minimum charge. In most instances where a charge is made lower than \$1.00 per horse-power, the change has been made by an order of a commission or an ordinance of some municipality.

As hereinbefore stated, the total motor horse-power installation in Oklahoma City is greatly in excess of the active load. In the statement filed at the request of the Commission by the defendant, it is shown that during the month of March, 1914, \$1,108.07 was collected in excess of the actual consumption from all power users of the city. The month of March is usually one of less business activity than the fall and winter months and may show a greater discrepancy between the amount of actual current used and the amount collected because of the minimum rate.

It is our conclusion from all the facts and circumstances in this case that the defendant should establish a minimum rate for power service of \$1.00 for one horse-power or less of connected load; 50 cents per horse-power for the next 29 horse-power; and 25 cents per horse-power for all over 30 horse-power of connected load. Should this minimum rate decrease the income of the defendant to the extent that this class of service will not pay its proportional part of the expenses, considering the fact that most of the power supplied is on day service, the defendant may make a complete showing to the Commission of the value of the property devoted to this service and the expenses incident thereto, with an application to readjust the power rates. However, regardless of the result of that showing, we are of the opinion that the minimum charges mentioned above are fair and reasonable, under the circumstances in this case.

To reiterate: a minimum charge is for the purpose of taking care of those continuous fixed charges which accrue to the plant because of the facilities devoted to the use of the particular consumer, such as meters, transformers, meter reading, collections, etc.

It is hereby ordered, That the defendant, the Oklahoma Gas and Electric Company, establish a minimum rate for power service of \$1.00 for one horse-power or less of connected load; 50 cents for the next 29 horse-power of connected load; and 25 cents for each additional horse-power of connected load.

It is further ordered, That the defendant shall refund to the Commission for the use of the thirty-one complainants herein, the amount collected in excess of the rates herein prescribed, for bills rendered from and including the first day of May, 1914. This order shall be in full force and effect and bills be rendered thereunder on and after the first day of April, 1915.

Oklahoma City, Oklahoma, March 17, 1915.

WASHINGTON.

The Public Service Commission.

THE PUBLIC SERVICE COMMISSION OF WASHINGTON, *ex rel.*
CITY OF SEATTLE *v.* SEATTLE LIGHTING COMPANY.

Case No. 1601.

Decided February 27, 1915.

Valuation for Rate Making Purposes Made.

The city of Seattle petitioned for a valuation of the property of the Seattle Lighting Company. The utility claimed a value of \$12,645,074, including therein cost of reproduction, working capital, bond discount, franchise value, going concern value and development cost.

The Commission in making its valuation excluded bond discount, franchise value and going concern value on the ground that these were not proper items to be included in the valuation for rate making purposes, and reduced the item of working capital from \$290,000 to \$158,649.79.

The Commission found that the cost of reproduction new was \$7,532,787 as against \$7,434,875 claimed by the company, and allowed a development cost of \$1,594,096 as against \$1,641,199 claimed by the company, and held that the fair value of the defendant's property for rate making purposes was \$9,126,883.

OPINION.*

On * * * October 20, 1913, the city of Seattle filed a complaint requesting and petitioning a valuation to be made of the property of said defendant company, which thereafter the said defendant answered, and upon the twenty-second day of January, A. D. 1915, said cause came regularly on for hearing. * * *

The defendant company at the request of the Commission has made extensions in the city of Seattle which were complained of by the said city as being in advance of the necessity of the population, and has requested the Commission not to consider the expenditures of money covering

* Only that portion of the case relating to the valuation of property is printed here.

such extensions in the valuation of the property of said defendant company. The Commission is of the opinion, and finds, that the company is entitled to have said property valued as a basis of its fair value for rate purposes.

VALUATION.

In the valuation of the property for rate making purposes defendant company contends for the following items of valuation:

1. Cost of reproduction.....	\$7,434,875
2. Working capital	290,000
3. Bond discount	800,000
4. Franchise value	850,000
5. Going concern value.....	1,629,000
6. Development cost	1,641,199
TOTAL	\$12,645,074

REPRODUCTION COST.

The estimated cost of reproduction as found by Mr. Burroughs and Mr. Lea is approximately the same, and the Commission finds and allows the sum of \$7,532,787 as cost of reproduction.

WORKING CAPITAL.

Defendant company has asked the sum of \$290,000 for working capital. Working capital includes stores and supplies. Mr. Burroughs has eliminated from his estimate of working capital the sum of \$41,679 invested by the company in lamps, goods and appliances, on the theory that such supplies should not be considered as an element in the valuation for rate making purposes. Mr. Lea has included this item. The total stores and supplies owned by the company at the date of this valuation is the sum of \$150,328.79. The Commission eliminates from the foregoing the sum of \$41,679, as suggested by Mr. Burroughs in his testimony, leaving the stores and supplies as an element for rate making in the sum of \$108,649.79. The operating expenses of the company are approximately \$50,000 per month, and it is our

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opinion that to allow in addition to the stores and supplies kept by the company the sum of \$50,000 as working capital will be a sufficient amount to meet the needs and necessities of the company. The total working capital, including stores and supplies as allowed by the Commission, will therefore be the sum of \$158,649.79.

BOND DISCOUNT.

Bond discount is the money expended by the company for the purpose of obtaining money with which to construct the plant. The rule of valuation laid down by the courts is that a company is entitled to a reasonable return upon the fair value of property used and useful in the operation of the plant at the time of the valuation. The Commission is of the opinion that the money expended for the purpose of obtaining money with which to construct the plant does not come within the rule laid down by the court. This Commission is bound by the rules laid down by the Supreme Court, and this rule having been so frequently stated by the different courts in valuation proceedings, we consider that it is binding upon us in the valuation of property for rate making purposes. Both the Commission's expert and Mr. Lea testified that bond discount should not be allowed (Tr. P. 122). We therefore follow the rule laid down by this Commission in the case of *Browne v. Pacific Northwest Traction Company*, Cause 1539, reported in Commission Leaflet No. 38, *American Telephone and Telegraph Company*, at page 746.

FRANCHISE VALUE.

The defendant company introduced as "Exhibit F," page 229 of the transcript, a letter from the assessor of King County, stating the assessed value of the franchise for the years 1907 to 1914 inclusive, and introduced in evidence its tax receipts. This was the only evidence offered on the subject of franchise value. The weight of authority as laid down by courts and commissions is against the allowance of franchise value as a basis for rate making purposes, and even if the foregoing evidence could be held sufficient to establish such value, the Commission would disallow it.

GOING CONCERN VALUE.

The claim made by the defendant company for "going concern value," as estimated by Mr. Lea, is disallowed. Mr. Lea disclaims any right on the part of the defendant company to "going concern value" as an element for valuation for rate making purposes. He said:

"In the rate making value, the item of going value is replaced by the item of development cost. It is clear that while the item of going value would be of direct interest to those having to do with the sale, or purchase, or financing of the company, it is not an item necessarily of interest to those having to do with the determination of the proper selling price of gas."

We therefore exclude the items of "bond discount," "franchise value," and "going concern value" and reduce "working capital" to the sum of \$158,649.70.

DEVELOPMENT COST.

The item of development cost is allowed by the Commission in the sum of \$1,594,096.

DEPRECIATION.

Mr. Lea finds the sum of \$753,370 for depreciation, Mr. Burroughs the sum of \$495,970, and the Commission finds the amount to be allowed for depreciation in this case as the sum of \$548,170.

The Commission finds, after having considered all of the items of valuation provided by our statute, the sum of \$9,126,883 to be the fair value of defendant's property for rate making purposes. This is reducing the amount contended for by the defendant company in the sum of \$3,518,191.

The Commission will make and enter findings of facts covering all matters concerning which it is directed by statute to inquire into, and concerning all matters regarding which evidence has been introduced in the above numbered causes 1600 and 1601 tending to show the value of the property used by the company for the public convenience, and

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will make and enter findings of fact in the above numbered causes 1600 and 1601 and will thereupon enter an order in the foregoing causes.

WITNESS, The Public Service Commission of Washington,
this twenty-seventh day of February, A. D. 1915.

American Telephone and Telegraph Company
Legal Department
15 Dey Street, New York, N. Y.

COMMISSION LEAFLET No. 43

**Recent Commission Orders, Rulings and Decisions
from the following States:**

Idaho	Nebraska
Illinois	New Hampshire
Kansas	New Jersey
Maine	Ohio
Massachusetts	Oregon
Michigan	South Dakota
Missouri	Washington
	Wisconsin

JULY 1, 1915

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PART I.
COMMISSION ORDERS, RULINGS AND DECISIONS
DIRECTLY AFFECTING TELEPHONE AND
TELEGRAPH COMPANIES.

ILLINOIS.

State Public Utilities Commission.

INTERTOWNSHIP TELEPHONE COMPANY *v.* DEKALB COUNTY
TELEPHONE COMPANY.

Case No. 2678.

Decided December 4, 1914.

Supplemental Order May 20, 1915.

**Establishment of Physical Connection for Local and Toll Service
Ordered.**

Petitioner sought the establishment of a physical connection between its lines and those of the respondent for local and toll service.

The respondent had been operating exchanges in various cities and villages in DeKalb county without competition and had been furnishing free interexchange service between its various exchanges. Because of the curtailment of this free interexchange service, several of the subscribers of the respondent canceled their subscriptions and organized the Intertownship Telephone Company, which began late in 1913 to furnish service in Hincley, Waterman, Shabbona and Lee, in competition with the DeKalb County Telephone Company. Practically all of the subscribers of the Intertownship company were formerly subscribers of the DeKalb County company.

The DeKalb County company had connection with the toll line system of the Central Union Telephone Company and also furnished service to a number of communities with which the subscribers of the Intertownship company had social and business relations. However, it was impossible for the Intertownship subscribers to communicate with said towns unless they went to a pay station of the DeKalb company. Therefore, the Intertownship company sought the establishment of physical connection for both local and long distance service.

The DeKalb County company maintained that the establishment of physical connection between its lines and those of the Intertownship com-

pany would result in the virtual confiscation of its property as its present subscribers would discontinue its service and subscribe to that of the Intertownship company.

Held: That public convenience and necessity demanded the proposed connection;

That said connection was feasible;

That although no degree of public convenience and necessity and no demonstration of the simplicity of a connection can ever stand as a justification for confiscation, directly or indirectly, nevertheless a physical connection may be compelled, provided the subscriber of the exchange which transmits his messages over a physical connection and over the lines of a competing company is made to pay a rate commensurate with the service that he receives. This rate may be higher than the rate named by either company to its own subscribers, for the reason that in handling service over the lines of the two companies certain elements of cost are involved that are not dealt with in the case of a subscriber talking over the lines of the company with which he is directly connected. Because of this condition and because of the greater value of the service of the company having the greater number of subscribers, the subscriber of one company desiring service over the lines of another company must pay a rate which reasonably compensates for the additional service, for a telephone subscriber is not entitled to the service of two or more companies at the same rate charged for the service of one company;

That such additional charge as may be determined upon by the two companies must be in the form of a joint rate to be paid by the subscriber and to be divided between the two companies;

That the point of making connection, the extent of such connection, and the schedule of rates to be established should be left to the companies in the first instance, and if no agreement can be reached a supplemental order should be made.

Ordered: That the DeKalb County Telephone Company and the Intertownship Telephone Company make such physical connection between their toll lines and between their local systems as may be required for the furnishing of toll line and local service, including rural service, to the subscribers of each company over the toll lines and local lines, including the rural lines, of the other company.

That the petitioner pay the expense of making such physical connection, and that the cost of subsequent maintenance be apportioned equally between the two companies.

Supplemental Order Prescribing Rates for Interchange of Toll and Local Service between Competing Companies Made.

As the companies were unable to agree upon the charges which each company was entitled to make for the use of its lines by the subscribers of the other company, the Intertownship company petitioned the Commission to fix the charges for this service.

Rates for Interchange of Service Fixed — Protective Arbitrary in Addition to Regular Local and Toll Rates Ordered.

Held: That as in this case a physical connection of two competing telephone utilities is required for local as well as long distance service, a charge must be fixed that will compensate each company for the use of its lines for local and toll service by the subscribers of the other company;

That as after the establishment of physical connection the telephones of either company will virtually constitute a public pay station of the competing company, the regular pay station charge of 5 cents per local call should be collected by the company originating the call and paid to the company completing the call, in order to cover the actual cost of service;

That, in addition, a protective arbitrary should be applied to local intercompany calls of the Intertownship company in order to compensate the DeKalb County company for any loss occasioned by the physical connection; that this arbitrary should be not less than 5 cents per call and should be collected and paid in addition to the 5-cent basic charge;

That a protective arbitrary should also be applied to toll calls originating on the lines of either company and routed over the lines of the other, that this arbitrary should be applied as a uniform charge against each toll call without consideration of the proportionate part of each company's toll plant that is called into service for the transmission of each toll message, as the establishment of a graduated protective toll rate, based on the distance traversed, or on the average number of subscribers served, or the calls handled would be impracticable in this case;

That since, especially in the case of the DeKalb County company, a very large part of the local development is dependent upon the toll and free trunking facilities offered to local subscribers, a greater protection should be afforded these facilities than would result from the application of a 5-cent arbitrary;

That a protective charge of 10 cents on each toll or free trunking call originating with the subscribers of either company for transmission over the lines of the other company is not unreasonable;

That neither of the companies should absorb the local message fees nor the additional charge for toll service, but each should collect the same from its subscribers and pay them to the other company.

OPINION AND ORDER.

Petition in the above entitled matter filed with the Commission on July 23, 1914, is as follows:

"Your petitioner, the Intertownship Telephone Company, of Shabbona, Illinois, represents to the State Public Utilities Commission that it is a corporation organized under the laws of the State of Illinois, with its principal office in the village of Shabbona, DeKalb County, Illinois; that

it is engaged in the telephone business, and operates a telephone business in the villages of Lee, Waterman, Shabbona and Hinckley; that it has been engaged in such telephone business for more than one year last past.

"Your petitioner further represents that the DeKalb County Telephone Company with its principal office in Sycamore, DeKalb County, Illinois, is a corporation engaged in the telephone business in DeKalb County and operates in the northern part of said county, and in and through the cities and villages of Sycamore, DeKalb and other cities and villages in the said DeKalb County; that the telephone wires of the said company extend in and to said villages of Waterman and Sycamore in close proximity to the telephone system of the petitioner.

"Your petitioner further represents that public convenience and necessity require a physical connection for the establishment of a continuous line of communication between the telephone system of your petitioner and the telephone system of the respondent for the conveyance of messages or conversations.

"Your petitioner further represents that it has on numerous occasions applied to the said DeKalb County Telephone Company for the establishment of said continuous line of communication between your petitioner and said DeKalb County Telephone Company, but that said respondent refuses to make a physical connection with the lines and system of your petitioner.

"Your petitioner further shows that the equipment of your petitioner is standard, such as is constructed by the Chicago Telephone Supply Company, of Elkhart, Indiana, and is practically new and in every way in first-class repair and condition, and that there is no reason, from a practical standpoint, why such connection should not be made.

"Wherefore, your petitioner prays that this honorable Commission shall summon the said DeKalb County Telephone Company to appear and answer this petition on a day to be fixed by your honorable body, and that a hearing may be had touching the public convenience and necessity for such physical connection for the establishment of a continuous line of connection between the telephone system of your petitioner and that of the respondent and that your honorable body may make such order in the premises as shall be just and proper to the end that a physical connection may be established between the telephone systems of the petitioner and the respondent, in order that the patrons of each line may interchange messages and conversations."

The respondent, the DeKalb County Telephone Company, answering the petition, admits "that the Intertownship Telephone Company of Shabbona, Illinois, is a corporation organized under the laws of the State of Illinois, with its principal office in the village of Shabbona, in the

county of DeKalb and State of Illinois," and admits that the petitioner is engaged in the telephone business and operates a telephone system in the southern part of DeKalb County, into and through the villages of Lee, Waterman, Shabbona and Hinckley.

This respondent denies that the petitioner has been engaged in such telephone business for more than one year last past, but charges the fact to be that said petitioner, Intertownship Telephone Company, while incorporated for the purpose of engaging in the telephone business for more than one year last past, has not had any telephone system in active operation prior to November 1, 1913.

Further answering the respondent, DeKalb County Telephone Company admits that it is a corporation organized under the laws of the State of Illinois, with its principal office in the city of Sycamore, in the county of DeKalb and State of Illinois, engaged in the telephone business and has been so engaged in the telephone business since 1895.

Further answering, this respondent says that its telephone system covers fifteen out of the eighteen townships in said DeKalb County; that it has exchanges in the city of Genoa, the villages of Kingston, Kirkland, Fairdale and Malta, the cities of DeKalb and Sycamore, and the villages of Maple Park, Hinckley, Waterman, Shabbona and Lee; that it has now in active operation in said thirteen exchanges more than 4,600 individual telephones; that it has an authorized capital stock of \$200,000, divided into \$20,000 shares of \$10.00 par value each; that 19,735 shares of the par value of \$197,350 have been sold; and it has invested in its properties more than \$350,000; that its farm lines extend into the neighboring counties of Boone, McHenry, Kane, Ogle and Lee and that it connects with the Central Union Telephone Company and other telephone systems surrounding said DeKalb County; and that there is no other telephone system in the fifteen townships of DeKalb County covered by the telephone system of the DeKalb County Telephone Company; that it, this respondent, the DeKalb County Telephone Company, has spent a large

amount of money to build its telephone system; that its equipment is standard and in first class repair and condition and that it is now and for some years last past has been fully equipped to satisfy all the demands for telephone service in the fifteen townships of DeKalb County, covered by its telephone system; that it, this respondent, DeKalb County Telephone Company, has heretofore spent a large amount of money and time to establish, extend and develop its telephone system in the villages of Hinckley, Waterman, Shabbona and Lee in said DeKalb County; that its pole lines cover practically the entire townships and it has well equipped exchanges in each of the villages within said townships; that it is ready and able to supply with telephones and telephone service all the inhabitants in the vicinity of the villages last above named.

Further answering, this respondent says that the remaining three townships of said DeKalb County, being the southern three townships of said DeKalb County, have heretofore been covered, and are now covered, by the Northern Illinois Telephone Company, which for more than fifteen years last past has owned and operated a telephone system in the southern three townships of DeKalb County, in the northern part of La Salle County and in part of the counties of Kendall and Lee, Illinois, and that said Northern Illinois Telephone Company connects its system with the exchanges of the DeKalb County Telephone Company of Hinckley, Waterman and Shabbona, Illinois; that said Northern Illinois Telephone Company is a telephone company well equipped with a standard telephone system in good repair, heretofore and still covering the entire portion of DeKalb County not served by the DeKalb Telephone company; that said Northern Illinois Telephone Company is well equipped and well able to serve that part of DeKalb County not served by the DeKalb County Telephone Company.

Further answering, this respondent says that prior to November 1, 1912, it did not charge any toll to its subscribers and users of its telephone, so that any subscribers

or users of one of the instruments of the DeKalb County Telephone Company could talk over the whole system without any charge; that on and after November 1, 1912, a toll charge of 5 cents was made to all subscribers of the DeKalb County Telephone Company for talking to any of the exchanges of the DeKalb County Telephone Company except the subscriber's local exchange; that this charging of tolls in the manner hereinabove set forth caused a great deal of dissatisfaction and 175 of the subscribers and users of telephones of the DeKalb County Telephone Company at the exchanges of Hinckley, Waterman, Shabbona and Lee canceled their subscriptions and ordered the instruments taken out; that thereafter to satisfy its subscribers, this respondent divided its exchanges into two so-called zones, having in the northern zone its exchanges in the cities of Sycamore and Genoa and in the villages of Kingston, Kirkland and Fairdale, and in its southern zone, exchanges in the city of DeKalb and in the villages of Maple Park, Malta, Hinckley, Waterman, Shabbona and Lee, and that it changed its toll charges so that the subscribers to its telephone system in the northern zone can talk over the whole zone without any toll charges and the subscribers to its telephone system in the southern zone can use the telephone within the zone without toll charges, but there is a general toll charge of 5 cents made for the connection or a talk from an exchange in the southern zone to any exchange in the northern zone, or from an exchange in the northern zone to an exchange in the southern zone. In addition thereto the subscribers of the DeKalb County Telephone Company in the four northern exchanges of the northern zone pay an additional charge of 5 cents to talk to any of the four southern exchanges of the southern zone and a similar charge is made for connections from the four southern exchanges of the southern zone to the four northern exchanges of the northern zone.

Further answering, this respondent says, although it changed its toll charges as originally made on November 1, 1912, in the manner hereinabove set forth, the dissatis-

fied subscribers above referred to did not come back to use the DeKalb County Telephone Company's telephone system, but very soon thereafter, and during the year 1913, the Intertownship Telephone Company was organized and commenced its operation as hereinbefore stated, about November 1, 1913; that after said petitioner, the Intertownship Telephone Company, commenced its telephone system, 116 more of the subscribers and users of telephones of the DeKalb County Telephone Company in the villages of Lee, Shabbona, Waterman and Hinckley, ordered their telephones out, so that in all approximately 300 subscribers and users of telephones of the DeKalb County Telephone Company from the exchanges in the villages of Lee, Shabbona, Waterman and Hinckley have ordered their telephones out.

Further answering, this respondent says that practically all of those that have so ceased to use the telephones of the DeKalb County Telephone Company are now using the telephones of the Intertownship Telephone Company, the petitioner herein; that these 300 subscribers and users of the telephones of the Intertownship Telephone Company are practically all the subscribers and users of the Intertownship Telephone Company; that they are starting a telephone system in the territory entirely covered by the DeKalb County Telephone Company and which territory the DeKalb County Telephone Company is now ready and able and willing to serve and supply with telephone service.

Further answering, the respondent says that said Intertownship Telephone Company has now approximately three hundred seventy-five telephones in service; that its subscribers are mainly persons who heretofore used the telephones of the DeKalb County Telephone Company; that the Intertownship Telephone Company is a company of small capital with a very limited amount of money invested in its property and is, therefore, able and does give telephone service to the users of its 'phones at a rate much smaller than the rate at which the DeKalb County Telephone Company is able to furnish service to its subscribers;

that it now seeks connection with the telephone system of the DeKalb County Telephone Company to enable its subscribers at a very small rate to use the large telephone system of the DeKalb County Telephone Company and get all the connections of the DeKalb County Telephone Company free of charge.

Further answering this respondent says that the loss of its subscribers and users of its telephones in the villages of Lee, Shabbona, Waterman, and Hinckley was a great financial loss to this respondent company and if the connection desired by the Intertownship Telephone Company is made, enabling the subscribers and users of the telephones of the Intertownship Telephone Company to use the telephone system of the DeKalb County Telephone Company, a great many more of the users of the DeKalb County Telephone Company will order their telephones out, for they will be enabled to get the advantages of the DeKalb County Telephone Company by becoming subscribers to the Intertownship Telephone Company which is able and does furnish telephone service at a cheaper rate than the DeKalb County Telephone Company can afford to furnish telephone service.

Further answering this respondent denies that there is a public necessity for a physical connection between the telephone system of the Interborough Telephone Company and the telephone system of the DeKalb County Telephone Company.

Hearing was held at the office of the Commission at Chicago on July 28, 1914. *Messrs. Raymond and Newhall*, attorneys, appeared for the petitioner and *John A. Faissler*, attorney, appeared for the respondent.

From the testimony and discussion at the hearing the following facts were brought out: The DeKalb County Telephone Company, hereinafter referred to as the DeKalb company, operates a general telephone system, consisting of local exchanges and connecting toll lines, in DeKalb County, with exchanges in the cities of Genoa, DeKalb and Sycamore, and the villages of Kingston, Kirkland, Fairdale, Malta,

Maple Park, Hinckley, Waterman and Shabbona and in the village of Lee, which is in Lee County, with approximately 4,600 telephones in service.

DeKalb County has an area of 638 square miles and a population of 33,457. The main line of the Chicago and Northwestern Railroad intersects the county east and west about midway between the north and south boundaries. The larger cities and towns in the county are north of the Chicago and Northwestern Railroad. Sycamore, which is the county seat, is located about ten miles north and five miles east of the center of the county.

The important towns in the southern part of DeKalb County are Hinckley, Waterman and Shabbona, none of which has a population of more than 600, and Sandwich, a city of about 3,000 population.

The villages of Hinckley, Waterman, Shabbona and Lee, the latter being in Lee County just across the DeKalb County Line, are located on the Chicago, Burlington and Quincy Railroad, which intersects DeKalb County, about midway between the main line of the Chicago and Northwestern Railroad and the southern boundary line of the county.

Prior to November 1, 1912, the DeKalb company furnished to all of its subscribers service over its entire system without any toll charge. On November 1, 1912, the DeKalb company put into effect a toll charge of 5 cents between all exchanges, which resulted in a great deal of dissatisfaction among its subscribers, particularly subscribers connected with the exchanges at Hinckley, Waterman, Shabbona and Lee, and 175 of these subscribers cancelled their subscriptions for service and ordered their telephones removed.

Immediately thereafter the DeKalb company divided the territory that it covers into two zones, designated as the northern zone and the southern zone, and discontinued the toll charge of 5 cents for connection between exchange points within the same zone. The northern zone includes the exchanges in the cities of Sycamore and Genoa and the

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villages of Kingston, Kirkland and Fairdale. The southern zone includes the exchanges in the city of DeKalb and the villages of Maple Park, Malta, Hinckley, Waterman, Shabbona and Lee. The 5-cent toll charge was continued in force and effect for messages from an exchange located in the southern zone to an exchange located in the northern zone, and from an exchange located in the northern zone to an exchange located in the southern zone.

This modification of toll charges was not satisfactory to the former subscribers of the DeKalb company connected with the exchanges at Hinckley, Waterman, Shabbona and Lee, and these former subscribers early in the year 1913 organized the Intertownship Telephone Company, and established exchanges in the villages of Hinckley, Waterman, Shabbona and Lee with a system of connecting toll and rural lines throughout the three southern townships of DeKalb County.

The Intertownship Telephone Company, hereinafter referred to as the Intertownship company, began furnishing telephone service about November 1, 1913, and shortly thereafter 116 subscribers and users of telephones of the DeKalb company in the villages of Hinckley, Waterman, Shabbona and Lee cancelled their subscriptions for service and ordered their telephones removed, so that in all, approximately 300 subscribers and users of the telephones of the DeKalb company connected with the exchanges at Hinckley, Waterman, Shabbona and Lee, ordered their telephones discontinued.

It is set forth in the answer of the respondent company and was further brought out by testimony presented at the hearing, that practically all of the parties who have subscribed to the service and are now using the telephones of the Intertownship company were formerly subscribers of the DeKalb company. A statement of the station development of the Intertownship company, submitted at the hearing, follows:

TERRITORY AND STATION DEVELOPMENT.

<i>Place.</i>	<i>Total population.</i>	<i>Number of Stations. Date July 1, 1914.</i>		
		<i>Town.</i>	<i>Rural.</i>	<i>Total.</i>
Hinckley.....	600	49	101	150
Waterman.....	400	30	42	72
Shabbona.....	594	66	69	135
Lee.....	303	15	26	41
TOTAL.....		160	238	398

In the same villages and surrounding territory the DeKalb company has a total of 612 telephones, as shown by the following table:

TERRITORY AND STATION DEVELOPMENT.

COMPETITIVE TERRITORY.

<i>Place.</i>	<i>Total population.</i>	<i>Number of Stations. Date July 1, 1914.</i>		
		<i>Town.</i>	<i>Rural.</i>	<i>Total.</i>
Hinckley.....	600	80	140	250
Waterman.....	400	40	44	84
Shabbona.....	594	40	89	129
Lee.....	303	45	134	179
TOTAL.....		205	407	612

From the foregoing it would seem that, despite the loss of 300 subscribers, the advantage, so far as subscribers are concerned, is with the DeKalb company.

From the testimony presented at the hearing it appeared that in addition to the 398 subscribers now served by the Intertownship company, there are 200 subscribers to the capital stock of the Intertownship company that have not yet had their telephones installed. Approximately all of these 200 stockholders are now subscribers to the service of the DeKalb company and are awaiting the decision of this Commission in this case before discontinuing their service with the DeKalb company and subscribing to the service of the Intertownship company. It further appeared that probably all of these 200 stockholders would discontinue the service of the DeKalb company and use exclusively the service of the Intertownship company.

The DeKalb company connects with the toll line system of the Central Union (Bell) Telephone Company and through the Central Union company has connection with the entire Bell system, including the lines of the American Telephone and Telegraph Company. The Intertownship company has connection through its Hinckley exchange with the Interstate Independent Telephone and Telegraph Company. The Interstate company is one of the largest of the so-called independent companies and operates a general telephone system consisting of local exchanges and connecting toll lines throughout the central and northern parts of the State, but has a very limited toll line development and no exchange development in DeKalb county.

Within DeKalb county there are a number of important commercially related communities with which the subscribers of the Intertownship company cannot now communicate except by calling at the toll station of the DeKalb company. However, the subscribers to the service of the DeKalb company can have social and business interests directly over the lines of the DeKalb company or the lines of the companies with which the DeKalb company is connected.

Much of the testimony offered by the petitioner dealt with the inconvenience and annoyance due to the lack of physical connection and the refusal of the DeKalb company to transmit messages originating on the lines of the Intertownship company. Several witnesses testified to this inconvenience and a number of others were ready to testify, but as such testimony was merely cumulative, it was deemed unnecessary to extend the record with a mass of such evidence. Particular consideration was given to the inability of the subscribers of the Intertownship company to connect with Sycamore, the county seat. All of the witnesses testifying had occasion to make more or less use of the toll lines of the DeKalb company between Hinckley, Waterman, Shabbona, Lee and Sycamore.

The particular section of the Act under which the order of this Commission is sought, requiring the physical connection of the lines of the two companies is Section 47,

Article 4, of the Act, entitled, "*An Act to Provide for the Regulation of Public Utilities*," which reads as follows:

"TELEPHONE AND TELEGRAPH CONNECTIONS. Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall determine that public convenience and necessity require a physical connection for the establishment of a continuous line of communication between any two or more public utilities, for the conveyance of messages or conversations, the Commission may, by order, require that such connection be made. If such public utilities do not agree upon a division between them of the cost of such physical connection or connections, the Commission shall have authority, after further hearing to establish such division by supplemental order."

In considering the question of public convenience and necessity it is necessary that the Commission determine whether such connection would seriously interfere with or jeopardize private rights, as well as whether the public would be better served by such a connection.

The contention of the DeKalb company, that to require it to establish a physical connection between its lines and the lines of the Intertownship company will result in the virtual confiscation of the property of the DeKalb company, has been given full consideration by this Commission. It may be admitted, in the language of the Michigan Railroad Commission in the case of *J. J. Tweedle et al. v. Michigan State Telephone Company et al.*,* that "no degree of public convenience and necessity supporting the physical connection of competing telephone properties and no demonstration of the simplicity of such connection can ever stand as a justification for confiscation directly or indirectly."

Telephone and telegraph companies are common carriers of intelligence and must give the same service to all who apply therefor, but this does not mean that a telephone company is bound to permit another telephone company to make a physical connection with its lines for the purpose of using such lines as its own subscribers use them. For a telephone company to transmit to any point on its lines, without discrimination, the message of all parties offer-

* See Commission Leaflet No. 32, p. 400.

ing them and willing to pay the same rate for the same service, is one thing. To admit outside companies or their patrons to the same use of the lines that its own patrons are entitled to, is a widely different thing.

An opposite conclusion would result in the practical confiscation of the larger plants, since the motive would be insistent in small companies organized for the purpose, or depleted or run down companies, to demand such connection. Moreover, it would enable one company to take the property of another company for public use without compensation and deprive the latter company of its property without due process of law. It is a well established principle that a telephone company cannot be compelled to become a party to the destruction of its own property, through the establishment of a switching service for another company operating in the same territory.

Nevertheless, a physical connection may be compelled provided the subscriber of the exchange which transmits his messages over a physical connection and over the lines of a competing company is made to pay a rate commensurate with the service that he receives. Such rate may be higher than the rate named by either company to its own subscribers for the reason that in handling service over the lines of two companies certain elements of cost are involved that are not dealt with in the case of a subscriber talking over the lines of the company with which he is directly connected. Because of this condition and because of the greater value of the service of the company having the greater number of subscribers, the subscriber of one company desiring service over the lines of another company must pay a rate which reasonably compensates for the additional service. The telephone subscriber is not entitled to the service of two or more companies at the same rate charged for the service of one company.

Such additional charges as may be determined upon by the two companies must be in the form of a joint rate to be paid by the subscriber and to be divided between the two companies.

No question was raised by counsel for either party as to the practicability of a physical connection between the two companies and it appeared from the testimony that such physical connection can be established at any point where the Intertownship company operates an exchange.

Since it appears that there is a public necessity for a physical connection for the interchange of both local and long distance service between the exchanges of the DeKalb County Telephone Company and the Intertownship Telephone Company; that such connection will not result in injury to the owners and users of the facilities of said companies; and that the public will be better served by such a connection, it follows that an order should be entered accordingly.

The point of making the connection, the extent of such connection and schedule or tariff of rates or charges that should be established, will be left to the companies in the first instance, and if no agreement can be reached as to the place, manner or method of making the connections and the schedule of rates or charges that shall be established, a further hearing will be granted to parties by the Commission and a supplemental order determining these matters. As the cost of making the connection will not be great, and as the Intertownship company will derive the greater benefits therefrom, it is equitable that the cost of such connection should be borne by said Intertownship company.

It is, therefore, ordered, That the DeKalb County Telephone Company and the Intertownship Telephone Company make such physical connection or connections between their toll lines and between their local systems as is required for the furnishing of toll line and local service, including rural service, to the subscribers of each company at the stations installed in the residences and places of business of such subscribers over the toll lines, including the rural lines, of each company.

It is further ordered, That the petitioner pay the expenses of making such physical connection or connections

and that the cost of the subsequent maintenance thereof be, and the same is hereby, ordered to be apportioned equally between said companies.

Sixty days is deemed a reasonable time within which the companies shall comply with this order.

By order of the Commission this fourth day of December, 1914, dated at Springfield, Illinois.

SUPPLEMENTAL OPINION AND ORDER.

Dated May 20, 1915.

On December 4, 1914, the Commission made and entered an order* in the above entitled case, requiring the Intertownship Telephone Company, hereinafter referred to as the Intertownship company, and the DeKalb County Telephone Company, hereinafter referred to as the DeKalb company, to make such physical connection or connections between their toll lines and between their local systems as is required for the furnishing of toll line and local service, including rural service, to the subscribers of each company, at the stations installed in the residences and places of business of such subscribers, over the toll lines and local lines, including the rural lines, of each company; and that the petitioner pay the expense of making such physical connection or connections, and that the cost of the subsequent maintenance thereof be divided equally between said companies. Sixty days were given the companies within which to comply with the terms of the order.

Subsequently it appeared that the companies were unable to determine and agree upon the charges which each company is entitled to for the use of its lines by the subscribers of the other company, and the Intertownship company filed a petition, praying that the Commission summon the DeKalb company to appear and answer said petition; that a schedule or tariff of rates or charges, just and reasonable as between the petitioner and the respondent, be deter-

* See Commission Leaflet No. 43, p. 311.

mined and fixed by the Commission, and that a supplemental order be issued in accordance with the findings and the opinion heretofore rendered in this case.

The answer of the respondent, DeKalb company, sets forth that it is ready and willing to make the physical connection with the petitioner, Intertownship company, if such rates and charges are established between the petitioner and the respondent so that the respondent will be compensated for loss and damage of its property and will be paid for the services rendered after such physical connection is established.

Pursuant to the petition and answer, hearing was held at the office of the Commission at Chicago, Illinois, January 27, 1915. The Intertownship company was represented by *John T. Raymond* and *John K. Newhall*, attorneys, and the DeKalb company by its attorney, *John A. Faissler*.

Considerable testimony was offered at the hearing, most of which pertained to the issues determined by the first hearing in the case and was of little value in determining the questions at issue at this time.

It appeared from the testimony that the DeKalb company, by its attorney, J. C. Joslyn, submitted to the Intertownship company under date of December 26, 1914, the following proposition:

"Subscribers of the Intertownship company wanting the service of the DeKalb company should pay for it at the rate of \$6.00 per year. A subscriber of the Intertownship company wanting a local connection with the DeKalb company shall pay a charge of 10 cents for such connection. A subscriber of the Intertownship company wanting to talk over long distance lines, which means any toll line, shall pay, in addition to the regular rate, a charge of 10 cents. The DeKalb company, when wanting a like service over the lines of the Intertownship company, shall pay like rates and charges."

This proposition was not accepted by the Intertownship company, and, in the opinion of the Commission, is unreasonable. The particular section of the act under which the Commission issued the order in this case is Section 47, Article IV, which reads:

"Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall determine that public convenience and necessity require a physical connection for the establishment of a continuous line of communication between any two or more public utilities for the conveyance of messages or conversations, the Commission may, by order, require that such connection be made. If such public utilities do not agree upon the division between them of the cost of such physical connection or connections, the Commission shall have authority, after further hearing, to establish such division by supplemental order."

From the language of this section of the act it appears that it is not intended to indirectly require the public desiring the facilities of two or more telephones companies operating in the same community to become subscribers to each. The fundamental purpose of legislation requiring the physical connection of two or more competing public utilities is to secure for the public more convenient and extensive use of the properties devoted to the use of the public. Public convenience and necessity, however, can not be subserved by other than just and lawful methods and primary consideration must be given to rights of property.

In the original opinion and order,* the Commission said:

"Telephone and telegraph companies are common carriers of intelligence and must give the same service to all who apply therefor, but this does not mean that a telephone company is bound to permit another telephone company to make a physical connection with its lines for the purpose of using such lines as its own subscribers use them. For a telephone company to transmit to any point on its lines, without discrimination, the messages of all parties offering them and willing to pay the same rate for the same service, is one thing. To admit outside companies or their patrons to the same use of the lines that its own patrons are entitled to, is a widely different thing.

An opposite conclusion would result in the practical confiscation of the larger plants, since the motive would be insistent in small companies organized for the purpose, or depleted and run-down companies, to demand such connection. Moreover, it would enable one company to take the property of another company for public use without compensation and deprive the latter company of its property without due process of law. It is a well-established principal that a telephone company cannot be

* See Commission Leaflet No. 43, p. 311.

compelled to become a party to the destruction of its own property, through the establishment of a switching service for another company operating in the same territory."

No evidence was presented at the hearing on January 27, 1915, which has changed the views of the Commission as to the position thus taken and these views are re-enforced by the decisions of the Wisconsin Commission in two cases, each presenting a situation analogous to the one presented in this case, viz.: *Frank Winter v. La Crosse Telephone Company et al.* (C. L. 34, p. 1141) and *E. D. McGowan v. Rock County Telephone Company et al.* (C. L. 38, p. 709). In each of these cases the Wisconsin Commission required the subscribers of the competing companies to pay an arbitrary rate in addition to the regular long distance tariff.

In commenting on the argument presented by the petitioner in the case of *E. D. McGowan v. Rock County Telephone Company et al.*, the Wisconsin Commission said:

"We cannot assent to the doctrine asserted that cost of service is the only consideration in fixing charges. The statute declaratory of the common law requires that charges shall be reasonable and just. It would seem that a charge which would result in taking the business from one company and giving it to its competitor could not be regarded as a just charge from any view point. * * * Cost of service is never the sole consideration in determining the reasonableness of a charge. It is one of the primary considerations, but there are other considerations often as vital in reaching a conclusion."

In this case it appears that since a physical connection of two telephone utilities operating in the same towns is required for local as well as long distance service, a charge must be fixed that will compensate each company for the use of its lines for local and toll service by the subscribers of the other company.

The convenience served by physical connection for local service is that of those subscribers of each exchange who occasionally desire to communicate with the subscribers of the other exchange, and in so far as local service is concerned, it is apparent that after the establishment of the

physical connection between the Intertownship company and the DeKalb company the telephones of either company will virtually constitute public pay stations of the competing company. A study of pay station charges at various exchanges indicates that the minimum charge for local calls is 5 cents per call, and it appears that 5 cents per local call, in the present case, to be collected by the company originating the call and paid to the company completing the call, would be sufficient to cover the actual cost of service.

It further appears that some protective arbitrary should be applied to the local intercompany calls of the Intertownship company, and this arbitrary should not be less than 5 cents per call and should be collected and paid to the DeKalb company in addition to the 5-cent basic charge. It is probable that this protective differential of 5 cents will fully compensate the DeKalb company for any loss occasioned by the physical connection, but if this differential does not appear to be required, or if additional protection to the DeKalb company seems necessary, a further study of this feature will be made.

In fixing the arbitrary protective rate that should be applied to toll messages originating with the subscribers of the Intertownship company and routed over the lines of the DeKalb company, and to toll messages originating with subscribers of the DeKalb company and routed over the lines of the Intertownship company, it is necessary to determine whether the arbitrary shall be applied as a uniform charge against each toll call or whether some consideration should be given to the proportional part of each company's toll plant that is called into service for the transmission of each toll call.

In this case, the interline messages handled by each company may be classed as short haul traffic only, and the same amount of work would be involved in handling a call originating with a subscriber of either company and routed over the lines of the other company as would be involved in handling a call originating and terminating on the lines

of either company, and the fact that a call may be routed over the lines of the DeKalb company to some point on the line of the Bell system, or over the lines of the Intertownship company to some point on the Independent system, does not materially effect the cost of the service rendered by either company. It appears, therefore, that the establishment of a graduated protective toll rate, based on the distance traversed, or on the average number of subscribers served, or the calls handled, is impracticable in this case. The only sound basis for the establishment of a protective arbitrary is the amount of work actually performed in furnishing service and the protection of property to which both companies are rightfully entitled.

Since the toll facilities of the DeKalb company constitute the important factor in the present case, it would seem that a greater protection should be afforded these facilities than would result from the 5-cent local differential, and a protective charge of 10 cents on each toll or free trunking call originating with the subscribers of either company does not appear unreasonable when it is considered that, in the case of the DeKalb company particularly, a very large part of the local development is undoubtedly dependent upon the toll and free trunking facilities offered the local subscribers; nor would it be proper to omit the 10-cent charge on calls of the Intertownship company over the "free service" trunks of the DeKalb company, since the free use of these trunks is obviously an element of consideration in the exchange rates of the DeKalb company.

It is, therefore, ordered, That each subscriber of the Intertownship Telephone Company desiring service over the local lines of the DeKalb County Telephone Company, including its rural lines, connected with its exchanges at Hinckley, Waterman, Shabbona and Lee, shall be charged a basic rate of 5 cents for each connection, and in addition thereto, a local message fee of 5 cents for each message; and each subscriber of the DeKalb County Telephone Company desiring service over the local lines of the Intertown-

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ship Telephone Company, including its rural lines, connected with its exchanges at Hinckley, Waterman, Shabbona and Lee, shall be charged a basic rate of 5 cents for each message.

It is further ordered, That each subscriber of the Intertownship Telephone Company desiring service over the toll lines and "free service" trunk lines of the DeKalb County Telephone Company shall be charged, for each message, a rate of 10 cents in addition to the regular schedule toll rate. Each subscriber of the DeKalb County Telephone Company desiring service over the toll lines and "free service" trunk lines of the Intertownship Telephone Company shall be charged, for each message, a rate of 10 cents in addition to the regular schedule toll rate.

It is further ordered, That neither of the companies shall absorb the local message fees, but each shall collect the same from its subscribers and shall be liable to the other company and shall pay to the other company such fees.

It is further ordered, That neither of the companies shall absorb any such additional charges for toll service, but each shall collect the same from its subscribers and shall be liable to the other company and shall pay to the other company the long distance tariff toll, plus such additional charge.

Under the circumstances presented in this case this order is necessarily experimental and is subject to revision at any time after ninety days from the date of the establishment of physical connection if it appears that either company is suffering any loss or injury from the arrangement. Furthermore, if the division of local charges and tolls herein provided, after a fair trial, shall be found inadequate and the companies cannot agree upon a proper division of the charges, the Commission will, by supplemental order, establish such division.

Thirty days is deemed a reasonable time within which to comply with this order.

By order of the Commission, this twentieth day of May, 1915, dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF THE ABINGDON HOME
TELEPHONE COMPANY FOR APPROVAL OF RATES.

Case No. 2324.

Decided May 6, 1915.

**Free Service to Municipality in Accordance with Terms of Franchise Held
Not Unlawful — Previous Order Amended — Increase in Rates
Authorized — Discount for Prompt Payment Approved.**

OPINION AND ORDER.

Upon notice to the Abingdon Home Telephone Company, the public utility affected, and to the city of Abingdon, in the manner provided by law, and after opportunity to them to be heard in the matter of the modification of the order* entered herein on the seventh day of January, 1915,

It is ordered, That the said order* of this Commission entered January 7, 1915, be amended and modified to read as follows:

The petition in this case shows that on April 1, 1913, the Abingdon Home Telephone Company purchased the plant, equipment and ordinance rights of the Mutual Union Telephone Company, of Abingdon, Illinois; that at the time of said purchase, the plant was inefficient and inadequate to supply the needs of the community; that immediately after the purchase of said plant, the petitioner constructed a new and modern telephone plant, including a new switchboard, installed in a new brick building owned by the telephone company; that during the period of reconstruction the petitioner continued to operate the old exchange and that on July 1, 1913, the schedule of rates for the old service was as follows:

Rates.

Business telephones	\$1 00 to \$1 75 per month (Depending upon the extent of service.)
Residence telephones	1 00 to 1 50 per month (Depending upon the extent of service.)
Rural telephones	1 00 to 1 25 per month (Depending upon the extent of service.)

* See Commission Leaflet No. 39, p. 788.

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The petition further shows that the reconstruction of the plant was completed in November, 1913, and that on December 1, 1913, the petitioner put into effect a new classification and schedule of rates and the following rule with respect to payments and discounts, viz.:

"Bills for rental service are payable monthly at the office of the company on or before the fifteenth day of the month in which the service is rendered, except that bills for rural exchange service other than rural switching may be paid quarterly on or before the fifteenth day of the second month of the quarter in which the service is rendered, and if so paid a deduction of 25 cents per month will be made."

The Commission is asked to approve the new classification and schedule of rates as set forth in the application, and also to approve the above rule with respect to payments and discounts.

The Commission having heard the testimony in the hearing and re-hearing, and being fully advised in the premises, finds that under the facts and circumstances in this case the following rates and charges are just and reasonable:

Rates.

Private line business telephones.....	\$2 00 per month
Party line business telephones.....	1 50 per month
Private line residence telephones.....	1 50 per month
Party line residence telephones.....	1 25 per month
Churches, hospitals and other charitable institutions...	1 50 per month
Extension telephones	50 per month
Extension bells	15 per month
Party line rural telephones on metallic circuit.....	1 50 per month
Telephones in residence of such employees as the company must reach in order to provide adequate service.	75 per month
Listing extra name in directory.....	50 per month
Rural switching for subscribers on their own lines and telephones	25 per month

The Commission further finds that the above mentioned rule with respect to payments and discounts is reasonable and just under the facts in this case.

The Commission further finds that the ordinance of the city of Abingdon which was granted on July 15, 1901, to a predecessor of the petitioner and under which the

petitioner is now operating and using the streets, alleys and public places of the said city for its poles and lines, provides that the grantee in said ordinance and his successors and assigns in accepting the ordinance agree to furnish for the use of said city, free of charge, to be placed under direction of the mayor of the said city, four telephones connected with the said exchange in said city, and the Commission finds that this agreement for the furnishing of four free telephones to said city is not unlawful.

It is, therefore, ordered, That the classification and schedule of rates shown in the second table above set forth and also the rule above set forth with respect to payments and discounts be, and the same are hereby, approved.

It is further ordered, That the above schedule of rates and charges so approved shall be filed with this Commission and shall be published, as provided by law, and shall be effective from and after the thirtieth day of September, 1914.

This amended order shall stand in lieu of the orders * entered herein on the thirtieth day of September, 1914, and on the seventh day of January, 1915, and shall be effective as of the thirtieth day of September, 1914.

By order of the Commission this sixth day of May, 1915, dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF THE CALHOUN
FARMERS' CO-OPERATIVE TELEPHONE COMPANY FOR AU-
THORITY TO CHANGE RATES.

Case No. 2638.

Decided May 6, 1915.

**Discrimination in Favor of Stockholders Eliminated — Increase in Rates
Authorized — Regulation of Rates to Offset Effect of Competition
Refused — Consolidation of Competing Systems Suggested.**

Petitioner sought authority to change its rates in order to eliminate discrimination in favor of stockholders, and to charge a rate of \$7.00 per year to all subscribers.

* See Commission Leaflet No. 35, p. 74, and Commission Leaflet No. 39, p. 788.

The owner of the Merida Telephone System, operating in the same territory as the petitioner, objected on the ground that the rate of \$7.00 was less than that which the Merida company was authorized to charge, and alleged that as a result of the difference in rates, the petitioner was taking business from the objector, especially since the objector's special rate to subscribers owning telephones had been discontinued by order of the Commission.

Held: That the sole duty of the Commission is to authorize a proper rate to be charged by the applicant without regard to the rates already authorized for the Merida system.

That the effect of undesirable competition is not an issue, and that the Commission would not be justified in regulating the rates of either company to offset the effect of competition, especially as both companies were competing prior to the time that the act providing for the regulation of public utilities became effective.

That the Commission would look with favor upon an application for the consolidation of the two systems.

Ordered, That the petitioner eliminate the existing discrimination in favor of stockholders and charge all subscribers \$7.00 per year.

OPINION AND ORDER.

Application in this matter sets forth that the petitioner is a public utility engaged in the management and operation of a rural telephone system in the northern part of Calhoun County, Illinois, with its principal place of business at Kampsville, and that as such public utility it is subject to the provisions of "*An Act to Provide for the Regulation of Public Utilities*," now in force in the State of Illinois.

Application further sets forth that the rates of the petitioner now in force and effect are as follows:

Stockholders' telephones	\$3 50 per year
Rented telephones, party lines.....	5 00 per year
Rented telephones, individual lines.....	6 50 per year
Message fees	10 per message

Application is made for authority to change rates, in order to discontinue the difference or discrimination in rates as between subscribers who are stockholders and subscribers who are not stockholders, and to charge a rate of \$7.00 per year to all subscribers without discrimination.

Hearing was held at Springfield, Illinois, July 21, 1914. *C. P. Becker*, treasurer of the Calhoun Farmers' Co-operative Telephone Company appeared for the petitioner; no one appeared objecting.

Prior to the hearing, however, *S. J. Merida*, owner of the Merida Telephone System, hereinafter referred to as the Merida system, which also operates in the northern part of Calhoun County, with its principal place of business at Bellevue, Illinois, appeared before the Commission and entered a general protest against the rates of the Calhoun Farmers' Co-operative Telephone Company, hereinafter referred to as the Calhoun company, because of the difference between them and the rates of the Merida system, as authorized by the Commission in an order* in Case No. 2162.

The principal objection urged against the proposed rate of the Calhoun company, is that it is less than the rates charged by the Merida system, which latter rates were approved and authorized by the Commission. Objector Merida contends that as a result of such difference in rates, the Calhoun company is taking business from the Merida system; that there is not enough business in the territory in which these two companies operate to maintain a single system that will serve the community adequately and efficiently; that the Calhoun company is able to operate at a low rate only by reason of the fact that its lines are cheaply and poorly constructed and also poorly maintained; that it has no outside toll connections, and that its service is inferior to that of the Merida system.

The Calhoun company, like all other so-called mutual companies, was organized, primarily, for the convenience of its own members. Recently, however, it has been in active competition with the Merida system and has secured many members that were formerly connected with the Merida system. This was due, in a measure, to the fact that the Merida system formerly furnished service to subscribers who owned their telephones at a less rate than the rate

* See Commission Leaflet No. 38, p. 620.

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charged subscribers not owning their telephones, and under the ruling of the Commission, it was necessary to discontinue this discrimination and charge all subscribers the regular schedule rate for the class of service furnished.

From the record it appears that the physical property of both the Merida system and the Calhoun company is not in good condition. This is probably due, in part at least, to insufficient revenue. It is doubtful whether sufficient revenue will be derived by the Calhoun company from the rate which it proposes in its application.

The statement of earnings and expenses submitted indicates that the Calhoun company is now earning a small profit, but a careful analysis thereof indicates that had the company met all of its obligations, no profit would have accrued and it is likely that a considerable deficit would now exist.

While recognizing the protest above referred to, the Commission feels that its sole duty in this case is to authorize a proper rate for the Calhoun company, without regard to the rates that have already been authorized for the Merida system, even though these rates may be higher than the rate proposed by the petitioner.

If the business of the Merida system suffers by reason of the fact that the rates of the Calhoun company are different, or lower, than the rates of the Merida system, then it is clearly the privilege of the Merida system to make any reductions in rates that may be necessary to protect its interests. The effect of undesirable competition upon the Merida system, however, is not an issue in this case and cannot be considered in determining a reasonable rate for the petitioner. The Commissioner would not be justified in this case in regulating the rates of either company to offset the effects of competition, especially as both companies were operating in competition at the time the *Act to Provide for the Regulation of Public Utilities* became effective.

In the case of the *Commercial Telephone and Telegraph Company v. Peoples Telephone Company of Southern Illi-*

nois,* Case No. 2139, decided May 29, 1914, the Commission held:

"That although it is undoubtedly an economic waste for two telephone companies to serve the same community, it does not follow that this Commission can determine which of two utilities legally operating in a community is the more fit, and thereupon proceed to eliminate the other from the community * * *."

In the present case, the Commission would not be justified in restraining the competitive advantages of either company at points where competition actually exists, or to effect such restraint through rate regulation. The Commission, however, would regard with favor an application for the consolidation of the two systems, but, in the absence of such application, the parties to this case can be granted only such relief as is sought by the petition and justified by the evidence.

As mentioned above, the petitioner asks for authority to change its rates so as to discontinue the present discrimination between the rates to stockholders and the rates to non-stockholders, and to charge a rate of \$7.00 per year to all subscribers.

Under the Commission's interpretation of the law, a stockholder, who is also a subscriber, must be charged the same rate as a non-stockholder. In other words, a stockholder is entitled to no preference or advantage in the matter of the rate he is to pay for service. He should be charged the regular rate, and should look to such dividends as may be declared by the company for a return on his investment.

From a careful consideration of the record in this case, the Commission has reached the conclusion that a rate of \$7.00 per year to all petitioner's subscribers, is justified.

It is, therefore, ordered, That the petitioner, the Calhoun Farmers' Co-operative Telephone Company, discontinue the schedule of rates that it now has in force and effect and

* See Commission Leaflet No. 32, p. 326.

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substitute, in lieu thereof, a rate of \$7.00 per annum; such rate to apply to all subscribers without discrimination.

It is further ordered, That the rate herein authorized shall become effective as of May 1, 1915, and shall be filed, posted and published by said petitioner as provided by section 34 of an act entitled, "An Act to Provide for the Regulation of Public Utilities."

By order of the Commission, this sixth day of May, 1915, dated at Springfield, Illinois.

IN THE MATTER OF THE COMPLAINT OF THE BYRON TELEPHONE
COMPANY v. ROCK RIVER TELEPHONE COMPANY.

Case No. 3000.

Decided May 6, 1915.

**Invasion of Occupied Territory and Duplication of Facilities Condemned
— Removal of Line of Invading Company Ordered.**

OPINION AND ORDER.

The complaint in this case alleges that the respondent, the Rock River Telephone Company, has extended its lines for a distance of over one mile into the territory covered by the complainant, the Byron Telephone Company, without the consent of the complainant and under the protest from its officials, and that in doing this, the respondent has caused a duplication of telephone facilities in addition to invading the territory of the complainant and taking away four of its subscribers.

A hearing was had in this matter before the Commission at Springfield, Illinois, April 7, 1915, and testimony was taken, both parties being represented.

The record disclosed the fact that the Rock River Telephone Company has invaded the territory of the Byron Telephone Company, paralleled one of the lines of the complainant for a distance of about one mile and taken off four of the complainant's subscribers.

The situation is rather tersely stated by the representative of the respondent in the hearing, who said "We built in there, that is all there is to it. We just want the decision of the Commission as to whether we had a right to do it or not."

It appears, therefore, that the Rock River Telephone Company has done two things which would seem to afford a proper basis for a fair settlement of this case, namely:

(1) It has invaded the territory of a competitor without any justifiable excuse.

(2) Its act has resulted in an unnecessary duplication of telephone properties parallel and very near to each other, the one line being on one side of the public highway and the other on the other side.

There was no complaint about the character of the service that the complainant had been giving to these four subscribers or to any others in that immediate vicinity. While there might have been some preference on the part of some of these subscribers to be connected with the system of the Rock River Telephone Company by reason of their having to pay a toll charge in order to reach certain people who were not connected with the exchange of the Byron Telephone Company, still the uncontradicted testimony of the representative of the complainant in this record is to the effect that the Byron Telephone Company is now, and has always, been ready to give service to these and to any other of its subscribers as fully and completely as the Rock River Telephone Company. It would seem that an inconvenience of this kind to a few isolated or outlying subscribers of a telephone company is not a difficulty that may properly be compared with those greater evils of permitting one telephone utility to invade a territory that is already occupied and served by another, and also permitting the unnecessary duplication of telephone properties. In a case of this kind, this is a difficulty which properly addresses itself to the consideration of the respective utilities in interest, with a view to reaching some reciprocal agreement or arrangement which will best subserve the mutual interest of all con-

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cerned. There is testimony in this record in behalf of the complainant that the Rock River Telephone Company had refused to co-operate with the Byron Telephone Company in this very matter.

This case does not involve any question as to determining whether or not the Rock River Telephone Company should have first made an application to the Commission for a certificate of public convenience and necessity authorizing and permitting them to make this extension into the territory of the Byron Telephone Company. Furthermore, for a proper disposition of this matter, the Commission is not under the necessity at this time of entering into any lengthy discussion of principles or theories that might have some bearing upon the question of fixing somewhere in what might be called a twilight zone between two telephone companies or other utilities, a distinct and definite line of demarcation, beyond which neither company should extend its local facilities. That would seem to be a question of fact rather than a question of theory, and in the present case the fact is so clearly apparent as to admit of no controversy.

And said cause having been submitted for disposition after hearing, and the Commission having given the matter due consideration and being fully advised in the premises, finds that the Rock River Telephone Company was not justified in invading the territory of the Byron Telephone Company, taking away some of its subscribers and causing an unnecessary duplication of telephone properties as it has done in this case.

It is, therefore, ordered by the State Public Utilities Commission of Illinois, That the said respondent herein, the Rock River Telephone Company be, and the same is hereby, ordered and directed to remove, withdraw, abandon or otherwise dispose of all its said poles, lines, wires, telephones, etc., used and contained in that part of its facilities which it has extended into the territory of the Byron Telephone Company for a distance of about one mile, as is alleged in the complaint and covered by the testimony taken in this case.

It is further ordered, That the Rock River Telephone Company be, and the same is hereby, given sixty days in which to comply with this order.

By order of the Commission, this sixth day of May, 1915, dated at Springfield, Illinois.

PIKE COUNTY TELEPHONE COMPANY *v.* H. G. NOBLE, EDWARD BARRY, JAMES HILL, JOHN JOHNSON AND GEORGE WAGONER.

Case No. 3013.

Decided May 6, 1915.

Unauthorized Construction and Operation of Exchange in Occupied Territory Ordered Discontinued — Public Utilities Law Interpreted as to "Public Use" and "New Plant."

The Pike County Telephone Company applied for an order restraining the respondents from constructing and operating a telephone exchange outside, but in the vicinity of, the village of Perry, without first obtaining from the Commission a certificate of public convenience and necessity.

The respondents, together with several others, were constructing an exchange outside the corporate limits of the village of Perry, but had not obtained, and did not intend to apply for, a certificate of public convenience and necessity. Respondents proposed to connect with the said exchange certain farm lines located in the vicinity of Perry and also to connect any individual residing in, or in the vicinity of, Perry who desired to construct a line to said exchange. A partnership or association was to be formed and officers were to be elected to manage the affairs of the exchange. Connection was to be made with other farmers' telephone exchanges and certain commercial exchanges whereby long distance service might be had, but no charge was to be made for transmitting a message from the proposed exchange to the lines of the long distance companies. The cost of maintenance and operation of the lines and exchange was to be met by an annual assessment of the stockholders. The association when organized was to extend its farmers' lines into the country to meet farmers' service when necessary or desirable.

Held: That the telephone system of respondents was being operated for public use within the meaning of Section 10 of the public utilities law and was therefore a public utility subject to the jurisdiction of the Commission.

That the establishment of an exchange by the respondents just outside the village of Perry would be a duplication of the system of the com-

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plainant and would be the construction of a new plant or facility within the meaning of Section 55 of the public utilities law.

Ordered: That the respondents cease the construction of a telephone exchange or plant in the vicinity of the village of Perry until such time as they shall have obtained from the Commission a certificate that public convenience and necessity require such construction.

The Commission expressed no opinion as to whether or not the respondents would be entitled to a certificate upon proper application.

OPINION AND ORDER.

The petition in this case sets forth that the petitioner is a public utility engaged in the telephone business in the village of Perry, Illinois, and vicinity; that the respondents, H. G. Noble, James Hill, Edward Barry, John Johnson and George Waggoner, as individuals and as directors representing themselves and a telephone company which is being organized, had not, on January 1, 1914, commenced the construction of a telephone exchange in Perry, Illinois, or in the vicinity thereof; that said respondents were before this Commission in Case No. 2660 * and were declared to be a public utility and ordered not to begin the construction of a telephone exchange in the village of Perry without a certificate of convenience and necessity; that said respondents have never obtained such certificate; that said respondents are now constructing a telephone exchange outside the corporate limits of said village of Perry and in the vicinity of that village and propose and intend to remove the lines owned by them from the switchboard of the petitioner and connect same with said telephone exchange; that said respondents are a public utility and have begun the construction of a telephone exchange outside the village of Perry and in the vicinity thereof, as aforesaid, and that said exchange is not in substitution of any existing plant, equipment, property or facility, or in extension thereof, or in addition thereto, and that said respondents have not obtained from this Commission a certificate of convenience and necessity, but are proceeding in violation of Section 55 of an "*Act to Provide for the*

* See Commission Leaflet No. 36, p. 272.

Regulation of Public Utilities," now in force in this State. The petitioner prays that an order be entered by this Commission directing the respondents to cease the construction and operation of, and that said respondents do not construct or operate, a telephone exchange or plant in the vicinity of said village of Perry without first obtaining a certificate of convenience and necessity.

The respondents answered and admitted that they, together with about two hundred other individuals, are constructing a telephone exchange in the vicinity of Perry, Pike County, Illinois, but outside of the corporate limits of said village; that they have never obtained a certificate of convenience and necessity from this Commission and that they do not intend to apply for such certificate. The respondents deny that they propose or intend to enter generally into the telephone business; that under the plan contemplated by them they will not operate a public utility; that they will not be serving the public generally, either directly or indirectly, but will be serving only the individual owners of said telephone lines. The respondents further deny that they intend to violate any of the provisions of said Public Utilities Commission Act, and deny that they are within the jurisdiction of this Commission. A hearing was held at the office of the Commission at Springfield on December 2, 1914. *O. F. Berry* and *Ben B. Boynton*, attorneys, appeared for the petitioner; *Ray Anderson*, attorney, appeared for the respondents.

It appears that in a former case, No. 2660,* brought by the same petitioner against the same respondents as in this case, this Commission decided under the facts as stipulated in that case, that the respondents were a public utility and subject to the jurisdiction of this Commission, and that they were proposing to construct and operate a new telephone exchange in the said village of Perry without first securing from this Commission a certificate of convenience and necessity. Accordingly, an order* was entered in that case on October 22, 1914, directing said

* See Commission Leaflet No. 36, p. 272.

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respondents to cease and desist from constructing and operating such proposed telephone exchange in the said village of Perry until such time as they had obtained from this Commission a certificate of convenience and necessity.

At the hearing in the present case, it was agreed by and between the respective parties that the stipulation of facts entered into in said case No. 2660* should be considered a part of the agreed facts in this case, except insofar as the facts set forth in the former stipulation might be inconsistent with the further facts stipulated herein. From said stipulations, the facts upon which a decision in this case rests are substantially as follows:

In the year 1902, two farmers' telephone lines were built in the village of Perry, Pike County, Illinois, and a switchboard was placed in Martin's Hotel at that place. A short time afterwards one Angus Ore built a telephone line into Perry, and also constructed an exchange in said village. Into this exchange the farmers' lines above mentioned were run. Later, the telephone line and exchange owned by said Angus Ore was sold to one Doane, and said Doane, in turn conveyed the same to the Pike County Telephone Company, the petitioner herein.

It appears that at the present time the petitioner owns and operates the only telephone exchange in the village of Perry, and that there has not been more than one exchange or switchboard in said village at any one time. It further appears that, commencing in about the year 1901, and during the several years immediately following, about fifteen farmers' telephone lines were built in the vicinity of Perry, and some of said lines were built inside the corporate limits of said village. Said farmers' lines represented an investment of approximately \$6,000. Afterwards, and in recent years, said Doane, who owned the line and exchange above referred to, reconstructed and rehabilitated a portion of said farmers' lines within the corporate limits of said village. Later, the Pike County Telephone Company reconstructed and took over all of

* See Commission Leaflet No. 36, p. 272.

said farmers' lines within the village of Perry. This was done without any compensation being paid to said farmers, and without their express consent, but the farmers made no objection to the work being done, and in fact, acquiesced therein.

The proposed corporation which, under the facts in the former case the respondents contemplated organizing, has since been abandoned. The respondents in this case appear as individuals and not as officers or directors of any proposed corporation, and they are not authorized to enter the appearance of their associates. Said respondents and about two hundred farmers who reside in the vicinity of Perry and also some retired farmers who live in the village of Perry, all of whom are now interested as part owners in the present farmers' lines, are constructing a telephone exchange just outside the corporate limits of Perry. All of the farmers' lines above mentioned have connected, or are about to connect, with said exchange and they are being, or will be, operated together as a partnership or association, and when the organization of said association is completed, officers will be elected to manage the affairs of said telephone exchange and telephone business. One telephone line has been built out from the village of Perry to connect with the said exchange and switchboard and is now connected with the same. This line was built by a man who is not a party to this proceeding, but his line was connected with said switchboard without objection on the part of the persons controlling or operating said exchange. As a part of the plan of operating said exchange, it has been decided that any individual citizen in Perry who desires to construct lines from within said village out to said telephone exchange and connect therewith, will be permitted to do so upon complying with the rules and regulations of said proposed association. It further appears that certain of the telephone lines that connect with said telephone exchange just outside of Perry are connected with other rural lines that run to Versailles, Illinois, and are there connected with a farmers' telephone

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exchange. Also that certain other lines that enter said Perry exchange are connected with rural lines that run to Mt. Sterling, Illinois, and are there connected with a commercial telephone exchange, so that telephone messages can be sent through said telephone exchange just outside of Perry to Versailles and Mt. Sterling, and thence over the wires of commercial companies to Quincy, Illinois, and other distant points. No charge, however, is made for transmitting a telephone message from the exchange located near Perry to either Versailles or Mt. Sterling. For a message from Perry to Mt. Sterling and thence to Quincy over the lines of the Mt. Sterling Telephone Company, the person sending such message is charged toll from Mt. Sterling to Quincy only, no charge being made for the transmission of such message from the exchange near Perry to Mt. Sterling. The same practice prevails with respect to messages that come into the exchange near Perry over the lines of commercial companies and thence over the lines in which respondents are interested. The cost of maintenance and operation of said telephone lines and exchange is to be met by assessment of the stockholders made each year. The association, when organized, proposes to extend the said farmers' lines in the country to meet farmers' service when necessary or desirable.

This case involves a determination of practically the same questions, though upon a somewhat different set of facts, as were presented by the former case between the same parties, viz.: (1) Are the respondents interested, or engaged in the construction or operation of a public utility under the facts and circumstances of this case. (2) If so, is the construction and operation of a telephone exchange just outside the corporate limits of the village of Perry a new plant, equipment, property or facility that is not in substitution of any existing plant, equipment, property or facility, or in extension thereof, or in addition thereto?

Section 10 of "*An Act to Provide for the Regulation of Public Utilities*," defines a public utility as follows:

"Every corporation * * * joint stock company or association, firm, partnership, or individual that now or hereafter;

(a) May own, control, operate or manage, within the State directly or indirectly for public use, any plant, equipment or property used or to be used for or in connection with * * * the transmission of telegraph or telephone messages between points within this State: * * * or that

(b) May own or control any franchise, license, permit or right to engage in any such business."

Therefore, the answer to the first question presented in this case depends upon whether the respondents, and others associated with them, propose to construct and operate a telephone system for public use. The respondents contend, as in the former case, that they, and the telephone association to be organized, will not operate for public use because they or it will not rent telephones to any person not a stockholder; that they or it will not make a charge to a non-stockholder for the use of the lines and telephone; that they or it will not operate with a view to making a profit, but will meet all expenses of operation and maintenance by an annual assessment upon its stockholders; that while their or its lines are and will be connected with the telephone exchanges of commercial companies, yet for toll messages originating on their or its lines to points on the lines of such commercial companies, no charge will be made for the transmission of such message over the lines of said respondents or of said association.

We agree that the above elements should be given careful consideration in deciding this question. However, there are other factors that enter into a determination of the question here presented. As in the former case, it appears from the record that anyone in the vicinity of respondents' telephone lines may secure telephone service by building a line to connect with respondents' lines, or to connect with the telephone exchange located outside the village of Perry. This service is open under the same terms and conditions, not only to the subscribers in the country, but is also open to any resident of the village of Perry and at the time of the hearing of this case one

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citizen had already built a line from within the corporate limits of Perry to the exchange of respondents and their associates. It also appears that the lines of the respondents and their associates are connected with the exchange of at least one commercial telephone company, and through that connection long distance service can be obtained by any subscriber to respondents' service; likewise messages can be sent from distant points such as Quincy, Illinois, over the lines of commercial companies and thence over respondents' lines to any subscriber connected with the latter's exchange.

From a careful consideration of all the facts shown by the record in this case, we are of the opinion that the telephone system in which the respondents and their associates are interested is being operated for public use and is therefore a public utility.

The Michigan Railroad Commission appears to have reached the same conclusion on a similar question under a statute giving it jurisdiction over "all persons, corporations, and associations operating telephone lines or exchanges doing a telephone business within the State of Michigan."

In the case of *Reading Central Telephone Company v. Fayette Rural Telephone Company*, decided January 5, 1915, 39 Commission Leaflet 833, at page 836, the Commission says:

"A person, corporation or association which sets its poles and strings its wires upon the highways, which installs a central switchboard and which gives means of communication between its immediate patrons and with those of distant organizations, cannot be said to be a private facility because the cost of its maintenance is apportioned in the form of an assessment. Such an organization is clearly doing a telephone business. Although such an organization may be doing business upon the mutual basis, it is doing business affected with a public interest; its tendency is to monopolize its field of operation, for it would be economic waste to duplicate its facilities and even duplication of lines would give access to only a limited number of its telephone users."

As to the second question, the only material difference between the facts as shown by this record and the facts

presented in case No. 2660,* is, that here the respondents are constructing and propose to operate a telephone exchange outside the corporate limits of Perry, instead of within the village.

Section 55 of the Public Utilities Commission Act provides that no public utility shall begin the construction of any new plant, or facility, which is not in substitution of any existing plant, or facility, or in extension thereof, or in addition thereto, unless and until it shall have obtained from this Commission a certificate that public convenience and necessity require such construction. So far as this record shows, the respondents and their associates have never owned nor operated an exchange in the territory where they now propose to construct and maintain a switchboard. Prior to the commencement of the construction of said exchange, the respondents and the individuals associated with them merely owned certain pole lines and wires. In our opinion, the establishment of an exchange by the respondents and their associates just outside the village of Perry would, in a measure, be a duplication of the telephone system of the petitioner and would be the construction of a new plant or facility within the meaning of said Section 55.

It is, therefore, ordered, That the respondents, H. G. Noble, James Hill, Edward Barry, John Johnson and George Waggoner, and each of them, either individually, or as officers, agents or employees of said public utility, cease and desist from constructing, maintaining or operating a telephone exchange outside, and in the vicinity, of the village of Perry, Illinois; and that said respondents, and each of them, cease and desist from taking any part in the construction, operation or maintenance of said telephone exchange, or in the management or control thereof, until a certificate of convenience and necessity is first obtained from this Commission, authorizing the construction of said exchange.

* See Commission Leaflet No. 36, p. 272.

The Commission at this time expresses no opinion as to whether the respondents or their associates would be entitled to a certificate of convenience and necessity upon proper application therefor being made.

By order of the Commission, this sixth day of May, 1915, dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF THE 'CITIZENS'
MUTUAL TELEPHONE COMPANY OF CAMBRIDGE FOR AU-
THORITY TO CHANGE RATES.

Case No. 3160.

Decided May 6, 1915.

**Increase in Rates Authorized — Discrimination in Favor of Stock-
holders Eliminated — Business Rates Held Applicable to Tele-
phones in Public Buildings — Combination Rates
Prohibited.**

Petitioner sought authority to discontinue its special rate for stockholders and to increase certain of its other rates, and also sought approval of its special rates for telephones in public buildings and its combination rate for business and residence telephones on one line.

The Commission considered the replacement cost of the plant, as estimated by the petitioner, the capital outstanding, the operating expenses and revenues under the present schedule of rates, and the probable revenues under the proposed schedule of rates. The revenues derived from the proposed schedule of rates would be 25 per cent. above the present revenues.

Held: That the special rates to stockholders were discriminatory and should be discontinued;

That a higher rate for telephones in public buildings than for ordinary business telephones was discriminatory, for the use of the telephone, and not its location, should determine the rate;

That a combination rate for a business telephone and a residence telephone on one line, less than the sum of the regular published business and residence rates was unlawful;

That as the proposed rates with the discriminatory features eliminated would merely pay operating expenses and allow 8 per cent. upon the estimated value of the plant, they should be approved.

Increase of Capital Assets Out of Rates Condemned.

Held: That the use of current resources to build up a plant, should be condemned, that the subscribers should not be required to contribute any amount, in the form of increased rates or otherwise, towards increasing the capitalization of the plant, since only the stockholders can share in the return on such increased capitalization.

OPINION AND ORDER.

This is an application for authority to discontinue discriminatory rates and to put into effect a schedule of rates that will yield additional revenue. Application sets forth that the petitioner is a public utility engaged in the management and operation of a telephone system in and around the town of Cambridge, Henry County, Illinois, and that as such public utility it is subject to the provisions of "*An Act to Provide for the Regulation of Public Utilities*," now in force in the State of Illinois.

Application further sets forth that the rates of the petitioner now in force and effect are as follows:

Stockholders' telephones — individual lines.....	\$7 00 per year
Stockholders' telephones — party lines.....	5 00 per year
Non-stockholders' telephones — individual lines.....	12 00 per year
Non-stockholders' telephones — party lines	10 00 per year
Telephones furnished in court house — each telephone..	20 00 per year
Rural telephones — lines and telephones owned and maintained by subscribers	4 00 per year

Application is made for authority to discontinue the present rates and to put into effect the following schedule:

Individual line telephones in public buildings.....	\$20 00 per year
Party line telephones in public buildings.....	16 00 per year
Individual line business telephones.....	14 00 per year
Party line business telephones.....	12 00 per year
Individual line residence telephones.....	12 00 per year
Party line residence telephones.....	10 00 per year
Business and residence telephones on one line.....	24 00 per year
Extension telephones	2 50 per year
Rural telephones — lines and telephones owned and maintained by subscribers	4 00 per year

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Hearing in this case was held at Springfield, Illinois, January 21, 1915, *Carl A. Melin*, attorney, appeared on behalf of the petitioner; no one appeared objecting.

The petitioner, in October, 1914, filed an application for authority to discontinue certain discriminatory rates, which authority was granted by the Commission in its order in case No. 2855, *Citizens' Mutual Telephone Company*.^{*} This application provided only for the discontinuance of discriminatory rates, and failed to mention any need for additional revenue. Subsequently an amended application was filed, which is the application now under consideration, but which reached the Commission after the order^{*} covering the original application had been issued. Therefore, the changes in rates authorized in the aforesaid order have not been placed in effect.

A statement of all assets, liabilities, earnings and expenses for the year ending June 30, 1914, was submitted by the petitioner as proof of the financial condition of the utility. According to this statement, the utility is serving, in and around the town of Cambridge, a total of 564 subscribers, 270 of which are "rural service" subscribers owning and maintaining their own lines and telephones. The utility is capitalized at \$4,750, of which \$3,540 is outstanding. In addition to this liability, there is a floating debt of \$5,100, which, according to the testimony submitted at the hearing, was contracted during the year 1913 in the establishment of an underground distributing system.

The replacement cost of the plant new is estimated by the petitioner at about \$15,000. In view of the fact that the utility is serving only 294 telephones in which it has any investment whatever, the balance of the development belonging entirely to the rural subscribers, it appears that an investment of approximately \$51.00 per station is considerably higher than would naturally obtain under ordinary conditions in exchanges of the same general char-

^{*} Noted in Commission Leaflet No. 38, p. 627.

acter as Cambridge, and it appears that this is accounted for by the underground distribution system recently installed.

According to the statement, the gross revenue for the twelve months ending June 30, 1914, amounted to \$3,500, including \$200 toll revenue, and the gross operating expenses, including repairs and taxes, amounted to \$3,335, leaving a net yearly revenue of \$165. An item of \$300 interest, however, left a deficit of \$135. No amount, apparently, was set aside for depreciation, and judging from the rather large floating debt, it appears that the so-called additions to plant are really chargeable to depreciation and replacement.

On the basis of the development as of June 30, 1914, the annual exchange revenue under the existing rates would amount to, approximately, \$3,314, as indicated by the following table:

<i>Classification</i>	<i>Rate</i>	<i>Revenue</i>
42 Individual line telephones (stockholders).	\$7 00 per year	\$294
25 Individual line telephones (renters).....	12 00 per year	300
126 Party line telephones (stockholders).....	5 00 per year	630
101 Party line telephones (renters).....	10 00 per year	1010
270 Rural service telephones	4 00 per year	1080
564* TOTAL.....		\$3314

It appears therefore that the petitioner's statement of gross revenue is approximately correct.

Under the proposed rates, the gross revenue, according to testimony submitted at the hearing, would amount to \$4,656, which is an increase of more than 25 per cent. over the present revenue. Such an increase in revenue hardly seems justifiable in view of the fact that the petitioner has placed a capital value on certain expenditures that are chargeable, in part at least, to reconstruction. Also, the schedule of rates that the petitioner proposes to put into effect contains certain irregular and discriminatory features.

* Number of stockholders and renter subscribers as shown by the annual statement submitted by petitioner for the year ending June 30, 1914.

Petitioner proposes to charge a rate of \$20.00 per year for each individual line telephone in a public building and an annual rate of \$16.00 for each party line telephone similarly situated. While it may be true that telephones in public buildings, such as court-houses, schools, etc., may be used at times more often than ordinary business telephones, it does not appear that any higher rate could be consistently charged for such service unless all service is on a measured, or per message, basis. The use of the telephone, rather than the location, should determine the rate; but inasmuch as the utility's service is all on a flat, or unlimited message, basis, it appears that any difference in rates as between subscribers receiving the same class of service would be discriminatory and unlawful.

Petitioner also proposes to charge a rate of \$24.00 per year for a business telephone and a residence telephone on the same line. Conference Ruling No. 13, "*In the Matter of Rates, Rules and Classifications of Telephone Service in Illinois*," provides:

"f. Every telephone company which offers business and residence rates should publish a separate and distinct rate for business telephones and for residence telephones, and a so-called combined rate for a business telephone and a residence telephone, which is less than the sum of the regularly published residence and business rates is unlawful."*

On the basis of the proposed rates with the discriminatory feature eliminated, the annual exchange revenue would amount to \$4,278, as shown by the following table:

Classification	Rate	Revenue
42 Individual line business telephones.....	\$14 00 per year	\$588
20 Party line business telephones.....	12 00 per year	240
25 Individual line residence telephones.....	12 00 per year	300
207 Party line residence telephones.....	10 00 per year	2070
270 Rural service telephones.....	4 00 per year	1080
564 TOTAL.....		\$4278

*A similar order prohibiting combination rates was made in *Application of Calhoun Telephone Company of Hardin, Illinois, for Authority to Change Rates*. No. 3415. May 20, 1915.

With the addition of \$200 toll revenue, the gross revenue on this basis would amount to \$4,478 annually. Assuming that the allowable operating expenses are \$3,335 as reported by the petitioner, the net revenue would amount to \$1,143, which is approximately 8 per cent. on an investment of \$15,000, which is the estimated value placed on the plant by the petitioner.

From the testimony presented at the hearing and from the statements filed by the petitioner, it appears that the utility has, in the past, conducted its affairs in rather an unbusinesslike manner in utilizing all of its current resources in attempting to build up the plant. The subscribers of a telephone utility should not be required to contribute any amount, in the form of increased rates or otherwise, toward increasing the capitalization of the plant, since only the stockholders can share in the return on such increased capitalization.

However, the evidence shows that the petitioner is now operating at a loss, and that the proposed schedule, with the discriminatory rates eliminated, will not yield any revenue in excess of what will be required by the utility. From a careful consideration of all the facts and circumstances presented in this case, the Commission has come to the conclusion that the relief sought should be granted.

It is, therefore, ordered, That the petitioner, Citizens' Mutual Telephone Company of Cambridge, Illinois, shall discontinue the schedule of rates and charges that it now has in force and effect and substitute, in lieu thereof, the following schedule:

Individual line business telephones.....	\$14 00 per year
Party line business telephones.....	12 00 per year
Individual line residence telephones.....	12 00 per year
Party line residence telephones.....	10 00 per year
Extension telephones	2 50 per year
Switching charge for "rural service" subscribers.....	4 00 per year

It is further ordered, That the schedule of rates herein authorized shall become effective as of May 1, 1915, and

shall be filed, posted and published by said petitioner as provided by Section 34 of an act entitled "*An Act to Provide for the Regulation of Public Utilities.*"

By order of the Commission, this sixth day of May, 1915, dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF THE McCLINTOCK
MUTUAL TELEPHONE COMPANY, OF CARTHAGE, ILLINOIS,
FOR AUTHORITY TO CHANGE RATES.

Case No. 3402.

Decided May 6, 1915.

**Discrimination in Favor of Subscribers Owning Telephones Eliminated
— Increase in Rates Authorized.**

OPINION AND ORDER.

Application in the above entitled matter sets forth that the petitioner is a public utility engaged in the management and operation of a rural telephone system in Hancock County, Illinois, with its principal place of business at Carthage, and that as such public utility it is subject to the provisions of "*An Act to Provide for the Regulation of Public Utilities,*" now in force in the State of Illinois.

Application further sets forth that the rates of the petitioner now in force and effect are as follows:

Rural party line telephones — subscriber owning the telephone	\$6 00 per year
Rural party line telephones — company owning the telephone	9 00 per year

Application is made for authority to adjust the rates, in order to discontinue the difference or discrimination in rates as applied to subscribers who own their telephones and subscribers whose telephones are furnished by the com-

pany, and to put into effect a rate of \$10.00 per year, such rate to apply to all subscribers.

“ In the Matter of Rates and Charges Applicable to Subscribers Who Own Their Telephones,” Conference Ruling No. 15,* and in other decisions heretofore made, the Commission held that it is unlawful to grant any reduction from the regular rate on account of subscribers owning their telephones,† and the rate that the petitioner now has in effect for subscribers who own their telephones is discriminatory and unlawful.

From a careful consideration of all the facts and circumstances presented in this case, the Commission is of the opinion that the proposed rate of \$10.00 per year, which rate is to be substituted in lieu of the rates now in force and effect, is a fair and reasonable rate, and,

It is, therefore, ordered, That the discriminatory rates and charges, as set forth in the application of the petitioner, McClintock Mutual Telephone Company, of Carthage, Hancock County, Illinois, shall be discontinued and a rate of \$10.00 per year be substituted in lieu thereof.

It is further ordered, That the change in rates herein authorized shall become effective as of June 1, 1915, and shall be filed, posted and published by said petitioner as provided by Section 34 of an act entitled, *“ An Act to Provide for the Regulation of Public Utilities.”*

By order of the Commission, this sixth day of May, 1915, dated at Springfield, Illinois.

* See Commission Leaflet No. 37, p. 457.

† Orders Requiring the Elimination of Discrimination in Favor of Subscribers Owning Telephones were Issued in Cases Involving the following Companies:

Berwick Switchboard Company. No. 3530. May 6, 1915.

Calhoun Telephone Company. No. 3415. May 20, 1915.

Beecher City Telephone Company. No. 3422. May 20, 1915.

Antioch Telephone Company. No. 3706. May 20, 1915.

IN THE MATTER OF THE APPLICATION OF THE GRANGE TELEPHONE COMPANY AND THE WOODSTOCK MUTUAL TELEPHONE COMPANY FOR APPROVAL OF SALE OF TELEPHONE PROPERTY IN SCHUYLER AND BROWN COUNTIES, ILLINOIS.

Case No. 3717.

Decided May 6, 1915.

Sale of Property to Competitor Approved.

OPINION AND ORDER.

A joint petition having been filed in the above entitled matter by the Grange Telephone Company, a corporation organized and doing business under the laws of the State of Illinois, with its principal place of business at Rushville, Schuyler County, Illinois, and the Woodstock Mutual Telephone Company, co-partnership, consisting of Charles Ilman, Allen Persinger, Dwight Persinger, Austin Black and Amos Everhart, of Rushville, Schuyler County, Illinois, asking that an order be entered by the Commission, authorizing the Grange Telephone Company to purchase from the Woodstock Mutual Telephone Company, for the sum of \$210, certain telephone property in Schuyler County, Illinois, including two lines extending from the corporate limits of the city of Rushville to the switchboard in the village of Ripley, Brown County, Illinois, and one line extending from the corporate limits of Rushville west and south into the towns of Buena Vista and Woodstock; also all franchises, right and privileges, including all of its title and interest in the switchboard in the village of Ripley.

The petition sets forth that the lines of the Grange Telephone Company parallel the lines of the Woodstock Mutual Telephone Company described therein, for nearly their entire length, and that the Grange Telephone Company is in a better position to care for and satisfactorily serve the subscribers of the Woodstock Mutual Telephone Company, and that it is willing to assume the obligations of furnishing such service.

The joint petition having been considered by the Commission, and it appearing that the telephone lines, equipment and other property described therein is no longer needed by, or useful to, the Woodstock Mutual Telephone Company, and is required by, and useful to, the Grange Telephone Company, and the Commission being fully advised in the premises, finds that the petition should be granted.

It is, therefore, ordered, That the Grange Telephone Company, of Rushville, Schuyler County, Illinois, be, and the same is, hereby authorized to purchase, and the Woodstock Mutual Telephone Company, of Rushville, Schuyler County, Illinois, is hereby authorized and permitted to sell, for the sum of \$210, certain telephone lines, equipment and other property described in the joint petition, the said purchase and sale to be made in all respects in strict accordance with the terms of the agreement for purchase and sale, dated March 20, 1915, which is attached to, and made a part of, the joint petition for approval of purchase and sale heretofore filed in this case.

By order of the Commission, this sixth day of May, 1915, dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF PATOKA TELEPHONE EXCHANGE, C. O. LIVESAY, OWNER, FOR AUTHORITY TO CHANGE RATES.

Case No. 2964.

Decided May 20, 1915.

Increase in Switching Rates Authorized — Traffic Study Made — Discount for Advance Payment Authorized.

Applicant sought authority to increase its rates for switching "rural service" subscribers from \$1.50 per year to \$4.00 per year with a discount of 25 cents per quarter for payments made quarterly in advance. The "rural service" subscribers entered their objections.

The applicant submitted its statement of earnings and expenses and computed the cost of service per "rural service" subscribers at \$3.08 per annum. However this computation was on the basis of the total number of stations connected and no attempt was made to segregate that

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part of expenses properly chargeable to switching "rural service" stations.

The Commission made a two day traffic study of the Patoka exchange and a tabulation of its results showed that 70 per cent. of the operating expenses, or \$580, was properly chargeable to "rural service" stations. With a station development of 189 "rural service" subscribers, this would amount to \$3.07 per subscriber.

No attempt was made to estimate the relative value of the service to "rural service" subscribers and city subscribers, but the Commission observed that the plant of the petitioner was about as valuable to the "rural service" subscribers as the rural plant was to the city subscribers.

Held: That the establishment of a rate of \$4.00 per annum for switching rural service subscribers, with a discount of 25 cents per quarter if payments be made quarterly in advance, was reasonable.

OPINION AND ORDER.

Application in the above entitled matter sets forth that the petitioner is a public utility engaged in the management and operation of a telephone system in and around the village of Patoka, Marion County, Illinois, and that as such public utility it is subject to the provisions of an act entitled, "*An Act to Provide for the Regulation of Public Utilities*," now in force in the State of Illinois.

Application further sets forth that the rates of the petitioner now in force and effect are as follows:

Individual line business telephones.....	\$18 00 per year
Two-party line business telephones.....	12 00 per year
Residence telephones, party lines.....	12 00 per year
Rural telephones, party lines.....	12 00 per year
Switching charge for rural service stations.....	1 50 per year

Application further sets forth that the rate of \$1.50 per annum for switching "rural service" subscribers, that is, subscribers who own and maintain their lines and telephones and connect with the exchange of the petitioner at the city limits of the village of Patoka, is unremunerative and insufficient to pay all necessary operating expenses, and application is made for authority to put into effect a rate of \$4.00 per annum for switching "rural service" sub-

scribers, with a discount of 25 cents per quarter if payment is made quarterly in advance.

This case was set for hearing at the office of the Commission at Springfield, Illinois, December 2, 1914, and the subscribers effected by the proposed change in the rate were notified of the date of such hearing through a notice addressed to the mayor of the village of Patoka. Hearing was held at Springfield, Illinois, December 2, 1914. *Ben B. Boynton*, attorney, appeared for the petitioner; no one appeared objecting.

The petitioner submitted, as evidence of the cost of switching the "rural service" subscribers, a statement of earnings and expenses, a report of station development and an inventory of the physical property of the utility.

From the statement of station development, it appeared that the utility had in service on October 1, 1914, 277 telephones, 68 of which were located in the village of Patoka and classified as "city telephones," and 209 rural telephones, 199 of which were "rural service" stations.

From the testimony presented at the hearing, it appeared that the average cost, per telephone, for switching the "rural service" subscribers amounted to \$2.97 per annum. However, in checking the statement of earnings and expenses, it appeared that an error had been made in figuring the average operating costs for each telephone connected with the exchange of the petitioner, and it further appeared that the operating expenses were apportioned on the basis of the total number of stations connected and that no attempt had been made to segregate that part of the expense properly chargeable to switching "rural service" stations. Accordingly, the case was taken under advisement in order that the statements might be analyzed by the experts for the Commission before the final order was entered in the case.

On January 19, 1915, Mr. R. M. Foltz, representing a number of "rural service" subscribers affected by the proposed increase in the switching rate, appeared before

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the Commission and stated that practically all of the "rural service" subscribers of the Patoka Telephone Exchange objected to the proposed increase in rates and requested that the objectors be given an opportunity to be heard. Accordingly, the case was set for rehearing February 2, 1915.

The case again came on for hearing February 2, 1915. The petitioner was again represented by *Ben B. Boynton*, attorney, and the objectors were represented by *Edmund Burke*, attorney.

In answer to the application of the petitioner the objectors filed a protest, signed by 103 "rural service" subscribers to the Patoka Telephone Exchange, alleging that the petitioner did not notify them of its intention to file an application for authority to increase such rate; that the "rural service" subscribers should have been given an opportunity to be heard in the matter; that the rate of \$1.50 per year per subscriber more than covers the cost to the petitioner of switching the "rural service" subscribers; and that if the rate is increased, the parties who own and maintain their lines and telephones desire to install a switchboard in the village of Patoka in order that they may operate their lines independently of the Patoka Telephone Exchange.

The statement of earnings and expenses, report of station development, and inventory of the physical property of the utility, presented at the hearing on December 2, 1914, were again offered by the petitioner as evidence of the cost of switching the "rural service" subscribers and the error in the average operating costs per telephone, which appeared in the statement of earnings and expenses, was acknowledged by the petitioner and the statement was corrected to show the average operating costs \$3.08 per telephone per annum instead of \$2.97 as testified to by the petitioner at the hearing on December 2, 1914. It also developed that the report of station development, as submitted at the hearing on December 2, 1914, was in error as to the

number of "rural service" subscribers; the original statement showed 199 "rural service" subscribers, whereas it appeared from the testimony that only 189 "rural service" subscribers are connected with the exchange of the petitioner.

It further appeared from the testimony presented at the hearing on February 2, 1915, that the Patoka Telephone Exchange undertakes to furnish to its subscribers so-called free service between Patoka and several points in Marion County, and it was contended by the objectors that they had, in a number of instances, been deprived of such free service and were compelled to pay toll for talking with points to which free service should have been given.

And it further appeared that the so-called free service is handled over rural lines or trunk-lines owned and operated jointly by the petitioner and the objectors and other rural companies with which the Patoka Telephone Exchange has connection; that the general condition of such rural lines and trunk-lines is such that interruptions to the service frequently occur and that it is difficult to maintain a continuous line of communication between the points in question over the jointly owned rural lines; that the Patoka Telephone Exchange has connection with the toll line system of the Central Union (Bell) Telephone Company through a line extending from Centralia to Patoka; that it is possible to reach many of the so-called free service points in Marion County via the lines of the Central Union Telephone Company, and that where business between Patoka and the so-called free service points is handled over the lines of the Central Union Telephone Company the regular schedule toll rates of the Central Union Telephone Company apply, and that the Patoka Telephone Exchange has no right to extend to its subscribers the free use of the toll line system of the Central Union Telephone Company.

It further appeared from the testimony that the service furnished to the "rural service" subscribers is identical to that furnished the local subscribers with the exception that

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the "rural service" subscribers own and maintain their own lines and telephones, whereas the local subscribers use the lines and telephones owned and maintained by the utility; that the rate for switching "rural service" subscribers should be considerably lower than the average rate for local subscribers; and that in order to determine an equitable switching rate it would be necessary to ascertain the amount of work the utility actually performs in switching the "rural service" subscribers; also the value to such subscribers of a connection with the town subscribers and the value to the town subscribers of connection with the rural subscribers.

And it further appeared that it would be impracticable to attempt to determine a switching charge on a basis of a definite rate of return on that part of the plant used exclusively in the handling of rural traffic; that the "rural service" subscribers should be considered as an integral part of the exchange system of the utility; that it would be difficult to determine what part of the total equipment is used for rural traffic alone, and that any division of the physical plant along this line would be arbitrary.

The petitioner was not prepared at this hearing to make a detailed showing as to the cost of switching said rural lines, and it was therefore stipulated, by the parties interested in the case, that a "peg count" or traffic study should be made of the traffic handled through the Patoka exchange under the supervision of the experts of the Commission. It was further stipulated that a verified statement of the data obtained from such traffic study should be filed and considered as a part of the record in this case. The case was then taken under advisement pending the filing of the report of the traffic study.

A "peg count," or traffic study, of the traffic handled through the Patoka switchboard was begun at midnight of February 9 and continued until midnight of February 11. An hourly record was kept of all originating calls, including busy calls, no answer calls, and calls for the time of

day. All calls, excepting busy, no answer and time calls, were classified as "rural to rural," "rural to city," "city to rural" and "city to city."

A record was kept also of the number of times the operator was required to restore rural drops released by the "rural service" subscribers ringing on the line. The results of the traffic study are indicated in the following tables:

TABLE A.
CLASS OF CALLS.

Hours.	Rural to Rural.	Rural to City.	City to Rural.	City to City.	Miscel- laneous.	Grand Total.	Restor- ing Rural Drops.
A. M.							
12-1.....	.....	.....	.....	.....	.....	.....	.....
1-2.....	.....	.....	.....	.....	.....	.....	.....
2-3.....	.....	.....	.....	.....	.....	.....	.....
3-4.....	.....	.....	.....	.....	.....	.....	.....
4-5.....	.....	.....	.....	.....	.....	.....	.....
5-6.....	.....	.....	.....	1	.....	1	1
6-7.....	4	3	3	2	1	13	16
7-8.....	11	6	2	5	6	30	38
8-9.....	10	9	5	13	11	48	49
9-10.....	6	7	4	16	8	41	37
10-11.....	5	5	4	9	2	25	15
11-12.....	3	3	2	13	4	25	15
P. M.							
12-1.....	5	3	4	7	3	22	31
1-2.....	3	3	2	7	3	18	22
2-3.....	3	4	6	5	3	21	14
3-4.....	3	6	9	8	5	31	26
4-5.....	6	5	1	12	4	28	19
5-6.....	5	4	4	8	5	26	26
6-7.....	7	2	1	9	5	24	29
7-8.....	7	3	3	5	4	22	14
8-9.....	.....	.....	.....	1	.....	1	3
9-10.....	.....	1	.....	1	.....	2	2
10-11.....	.....	1	.....	.....	1	2	.....
11-12.....	.....	.....	.....	.....	.....	.....	.....
TOTAL.....	78	65	50	122	65	380	367

TABLE B.

Total number of all subscribers.....	265
Average number of calls handled per day*.....	380
Average number daily calls farmer to farmer same line†....	367
<hr/>	
Total average daily calls — all subscribers.....	747
Average number daily calls per subscriber.....	2.82
<hr/>	
Total number of city subscribers.....	66
Average number of city calls per day.....	172
Average number of daily calls per city subscriber.....	2.61
<hr/>	
Total number of rural subscribers.....	199
Average number of rural calls per day.....	510
Average number of daily calls per rural subscriber.....	2.56
<hr/>	
Ratio of city subscribers to total subscribers.....	.249
Ratio of rural subscribers to total subscribers.....	.751
Ratio of average city calls to average total calls per day....	.230
Ratio of average rural calls to average total calls per day..	.683
Ratio of average miscellaneous calls to average total calls per day .....	.087
<hr/>	
Ratio of average daily number of rural drops restored to the average daily number of rural calls.....	.72

* Includes 65 no answer calls, busy calls and inquiries for time of day.

† This number was indicated by the number of times the farmer drops had to be restored.

“Table A” shows the average number of calls handled per hour during the twenty-four hours and is the average of the two days’ study. “Table B” is an analysis of “Table A” and shows the relation between the city and rural traffic and the number of subscribers served.

The hourly distribution of the rural traffic follows closely the distribution of the city traffic, the maximum forenoon and afternoon busy hours of both the rural and city traffic occurring about 9 A. M. and 1 P. M. respectively. This condition, it was found, tended to reduce the speed of the opera-

tor in handling city calls. All rural subscribers are rung by code and rural calls consequently require about twice as long to complete as do city calls. Therefore, as the Patoka switchboard is equipped with only one operator's position, the rural traffic conflicts with the city traffic on account of the greater length of time the rural connections must remain up.

The average daily calling rate of 2.56 per rural subscriber is low in comparison to the city calling rate and the calling rate for the exchange as a whole. It is reasonable to expect, however, that rural traffic will increase materially during the spring and summer, and the rural calling rate as now determined is naturally the minimum.

The total operating expenses, exclusive of repairs, depreciation and taxes, chargeable to the general plant, for the year ending December 31, 1914, amounted to \$882.93, or \$3.08 per subscriber, according to the sworn statement of the petitioner. At \$3.08 per subscriber, the 189 rural subscribers are responsible for \$582.12 of the total operating expenses. The apportionment of expenses on this basis, however, is purely an arbitrary method of arriving at the cost of rural switching, as no consideration is given to the amount and character of the rural traffic.

According to the traffic study, an average of 380 daily calls are actually handled by the utility. This includes 65 no-answer calls, busy calls and inquiries for the time of day. In a larger exchange these miscellaneous calls would have represented a negligible percentage of the total traffic and could have been ignored, but conditions at Patoka are such that the miscellaneous calls take up a considerable part of the operator's time, due to the tendency of the subscribers to engage the operator in conversation.

The 380 average daily calls, which includes 143 rural calls switched by the petitioner, do not, however, represent all of the work of the utility chargeable to operating. It was found that the rural subscribers, in addition to calling the central office, called on their own lines an average of 367 times daily, and that the amount of attention required on

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the part of the operator in supervising these calls warranted including them in the total traffic.

The grounded lines switched by the petitioner necessitate a type of central office equipment which permits the operator to receive all calling signals, regardless of whether a signal is for the central office or a subscriber on the same line. The rural calling signals in use are the usual combinations of long and short rings; immediately the rural subscriber rings on the line, the shutter of the line drop on the switchboard falls, and unless the operator is closely observing the drop she will not know whether the subscriber is calling the central office or some one on the line.

The operator is not only required to restore the shutter of the line drop every time a rural subscriber rings on the line, but in practically every case must also "plug in" and ask the subscriber whether or not he is calling "central," the result being that approximately the same amount of attention is given to rural calls between subscribers on the same line as to rural calls requiring central office connection.

Including in the total calls the calls from subscriber to subscriber on the same line, the rural traffic handled by the petitioner amounts to 68 per cent. of the total traffic. However, a considerable number of the miscellaneous calls originated on the rural lines, and it appears reasonable therefore, to increase the percentage of total calls chargeable to the rural subscribers to at least 70 per cent.

Assuming that about 70 per cent. of the work of operating is chargeable to the rural subscribers, it is fair to apportion to the rural traffic 70 per cent. of the total expenses of operation, or \$580. With a development of 189 "rural service" subscribers, this would amount to \$3.07 per subscriber, which is approximately the same as the figure obtained by apportioning expenses on the basis of the number of subscribers served. At the present switching rate of \$1.50 per station, the 189 "rural service" stations produce only \$284, or less than one-half of the expenses of operation.

It appears, therefore, that the present rate of \$1.50 per year for switching "rural service" stations is entirely inadequate, and, according to the schedules on file with the Commission, such rate is very much lower than the average switching rate now in effect in other similar exchanges. Considering the amount of work the petitioner is required to perform in handling the rural traffic, a considerably higher rate apparently is justified.

No attempt has been made to estimate the relative value of the service to "rural service" subscribers and city subscribers. While the "rural service" subscribers greatly outnumber the city subscribers, the study showed that the "rural to city" calls were more numerous than the calls from city to rural subscribers. Moreover, the connection with Patoka enables the "rural service" subscribers to obtain so-called free service with a number of towns and villages in Marion County, although in some instances it is necessary to route calls from Patoka to these "free service" points over toll lines at the regular toll charge per message. From the evidence presented in the case, however, it appears that the physical plant of the petitioner is about as valuable to the rural subscribers as the rural plant is to the city subscribers.

No reference was made in the testimony presented at the hearings to that part of the answer of the objectors as to their right to install a switchboard in the village of Patoka and operate their lines independently of the Patoka Telephone Exchange, and no consideration has been given to this question, as it does not appear to be an issue in this case.

In view of the facts determined from the testimony presented at the hearings and the information obtained from a study of the telephone traffic handled by the petitioner, it appears that the establishment of a rate of \$4.00 per annum for switching "rural service" subscribers, with a discount of 25 cents per quarter, if payment is made quarterly in advance, is justified, and that such rate will not produce any revenue in excess of the actual expenses of the peti-

tioner properly chargeable to switching "rural service" subscribers.

It is, therefore, ordered, That the petitioner, Patoka Telephone Exchange, C. O. Livesay, owner, be, and is hereby, authorized to put into effect a rate of \$4.00 per annum for switching "rural service" subscribers, with a discount of 25 cents per quarter, if payment is made quarterly in advance.

It is further ordered, That such rate shall become effective as of July 1, 1915, and shall be filed, posted and published by the petitioner as provided by Section 34 of an Act entitled, "An Act to Provide for the Regulation of Public Utilities."

By order of the Commission, this twentieth day of May, 1915, dated at Springfield, Illinois.

CITY OF MATTOON v. COLES COUNTY TELEPHONE AND TELEGRAPH COMPANY.

Case No. 2988.

Decided May 20, 1915.

Deposit as Prerequisite for Service Condemned.

The defendant required applicants for service to make a deposit of \$3.00 to establish credit with the company. This deposit was placed to the credit of the subscriber and was credited to his account at the end of the primary term.

Held: That this was an unreasonable requirement; that while a deposit may be justifiable in the case of a gas, water, electric light or power company furnishing service on a measured or meter basis, since the amount of the charge may not be determined until the service has been actually rendered, it is not justifiable in the case of a telephone company furnishing unlimited service on a flat rate basis; that in cases where the responsibility of the applicant for service is doubtful, the company would have the right to collect a sufficient amount of rental in the form of an advance payment to protect it against loss of the cost of installation which might result from the abandonment of the telephone by the subscriber within a short time after the installation.

Practice of Charging One Exchange Toll for Messages to Second While Allowing Second to Send Messages to First without Payment of Toll Held not Discrimination.

Subscribers at Mattoon were obliged to pay toll on messages to Humboldt, but Humboldt subscribers were not obliged to pay toll for messages to Mattoon. The Humboldt exchange was operated as a distinct unit under a rate schedule based upon the development of, and service furnished to, that village.

Held: That "it is lawful for telephone companies to furnish free toll service to their respective subscribers, provided that the same is given to all subscribers alike. In such cases the free telephone service may be regarded as a part of the service which each company is providing for its subscribers";

That the language "all subscribers alike" as here used means all subscribers similarly situated; i. e., to all subscribers of one exchange.

Complaint as to Unjust Charges for Special Type of Equipment and as to Lack of Courtesy of Employees Dismissed as Unfounded.

As to the complaint that the defendant was charging 50 cents per month for "Bell telephone service," the evidence showed that this extra charge was merely the difference between the rate for individual line business service and two-party line business service;

As to the alleged discourteous treatment by employees, the evidence did not show any general lack of courtesy;

Held: That the complaint as to these charges should be dismissed.

Reduction in Rates Refused.

The Commission considered the value of the property, the capitalization and the revenues and operating expenses of the defendant and found that the present rates yielded a return of approximately 7 per cent. on the fair value of the property. Comparison of the Mattoon rates with rate schedules in effect in other cities of the same class with a similar telephone development was made.

Held: That no general reduction of rates was warranted.

OPINION AND ORDER.

The original complaint in this case was signed by Charles T. Welch, a member of the city council of the city of Mattoon. Later an amended petition was filed, setting forth that the Coles County Telephone and Telegraph Company, hereinafter referred to as the Coles County company, is demanding and receiving rates and other charges for the service rendered by it that are not just and reasonable, in

violation of Section 32 of the "*Act to Provide for the Regulation of Public Utilities*," as follows, to wit:

(1) That it is charging and receiving from its patrons 50 cents per month for "Bell telephone service;" (2) that it charges to, and receives from, its patrons \$3.00 for the installation of telephones; (3) that it charges Mattoon patrons for neighboring town connections and makes no charge to neighboring town patrons for Mattoon connections; (4) that certain employees of the company have failed to render prompt and courteous treatment to its patrons.

Hearing was held at Springfield, Illinois, January 5, 1915, on the amended petition. The city of Mattoon was represented by *Ira Powell*, city attorney, and the Coles County company, by *John McNutt*, attorney.

The testimony presented at the hearing related, in a general way to the rates of the defendant now in effect in the city of Mattoon, and to the specific charges set forth in the complaint.

With reference to the complaint that a charge of 50 cents per month is made for "Bell telephone service," it appeared from the testimony, that prior to 1908 the defendant did make an extra charge to subscribers whose telephones were equipped with "long distance" instruments furnished by the American Bell Telephone Company under an agreement between the defendant and the Central Union (Bell) Telephone Company. It further appeared that since that date the regular schedule rate for the class of service furnished has been charged all subscribers regardless of the type of equipment installed, and that the charge of 50 cents referred to herein is merely the differential between the rate for individual line business telephones and two-party line business telephones.

It further appeared that it is the practice of the defendant company to require applicants for service to make a deposit of \$3.00 to establish credit with the company, and that this is looked upon by the subscribers as an installation charge. This deposit is placed to the credit of the subscriber by the utility and credited to the subscriber's ac-

count at the end of the primary term of the contract. The payment of this deposit is not required in every case, applicants for service who are recognized as having an established credit in the community not being required to make such deposit.

This appears to be an unreasonable requirement in view of the fact that the utility is rendering service on an unlimited or flat rate basis. A deposit may be justifiable in the case of a gas, water, electric light or power company furnishing service on a measured or meter basis, since the amount of the charge may not be determined until the service has actually been rendered, but this is not true in the case of a telephone company furnishing unlimited service on a flat rate basis. It appears that in cases where the utility is doubtful as to the responsibility of the applicant for service, it would have the right to collect a sufficient amount of rental, in the form of an advance payment, to protect it against loss of the cost of installation which might result from the abandonment of the telephone by the subscriber within a short time after the installation.

The testimony in connection with that part of the complaint relating to charges paid by the subscribers at Mattoon for connection with neighboring towns while no charge is made from such neighboring towns to Mattoon, developed that this relates specifically to service between Mattoon and Humboldt. The defendant operates a small exchange in the village of Humboldt, which is located nine miles north of Mattoon, and subscribers at Humboldt receive "free service" Mattoon, while a charge of 10 cents is made on calls from Mattoon to Humboldt. There does not appear to be any discrimination against the Mattoon subscribers. The Humboldt exchange is operated as a distinct unit under a rate schedule based on the development and service furnished to the subscribers in that village.

The Commission has ruled (Conference Ruling No. 13)* that:

* See Commission Leaflet No. 31, p. 31.

"It is lawful for telephone companies to furnish free toll service to their respective subscribers provided that the same is given to all subscribers alike. In such cases the free toll service may be regarded as a part of the service which each company is providing for its subscribers."

As used in this ruling, the language, "to all subscribers alike," is construed to mean, to all subscribers similarly situated, that is, to all subscribers of one exchange.

While some testimony was offered in connection with the alleged discourteous treatment of patrons by employees of the defendant, it did not appear that there is any general lack of courtesy on the part of the employees in dealing with the public and the defendant made it clear that the management of the company gives particular attention to this feature of the service and that all complaints of inattention or discourtesy on the part of employees are summarily dealt with.

With regard to the rates, no extended discussion appears to be necessary. According to the files of the Commission, the rates of the Coles County company now in effect in the city of Mattoon are as follows:

Individual line business telephones.....	\$30 00 per year
Two-party line business telephones.....	24 00 per year
Individual line residence telephones.....	24 00 per year
Two-party line residence telephones.....	18 00 per year
Extension telephones — business	9 00 per year
Extension telephones — residence	6 00 per year

Outside of the city limits the business and residence telephones are \$26.00 and \$20.00 respectively.

The defendant filed with the Commission a financial statement for the year ending December 31, 1914, and a report of its property account. The financial statement shows total operating revenues amounting to \$108,921.88. Operating expenses, including depreciation and taxes, but not including any allowance for interest, amount to \$79,789.37 so that the amount available for interest and dividends was \$20,298.27. The present book value of the property, as indicated by the report, is \$293,829.14, and since it appears

that such value, less interest in the capital account for the years 1913 and 1914, was determined by an appraisal of the property as of January 1, 1913, the Commission does not consider it necessary to make a physical valuation of the property at this time. On the basis of the present book value of \$293,829.14, the amount available for interest and dividends for the year ending December 31, 1914, which is \$20,298.27, amounts to approximately 7 per cent. of the present value of the property.

The capital stock of the company is \$75,000 and the funded debt, \$151,135. A 5 per cent. dividend was paid on the capital stock, amounting to \$3,750, and the interest on the funded debt amounted to \$9,256, leaving a balance of \$7,292.27, which was transferred to corporate surplus.

The report of the utility complies with the requirements of the Uniform Classification of Accounts prescribed by the Commission and appears to be accurate so far as the reported total of operating revenues and expenses is concerned.

It is evident that no general reduction of rates is warranted when the net earnings of the utility do not exceed 7 per cent. upon the present value of the property. The rate schedule is comparable with schedules in effect in other cities of the same class with a similar telephone development, and it appears that the entire property of the Coles County company has been maintained and operated at a high standard of efficiency and that Mattoon and the other communities in which the company operates are adequately and efficiently served.

It is, therefore, ordered, That the defendant, Coles County Telephone and Telegraph Company, of Mattoon, Illinois, shall discontinue the practice of requiring applicants for service to make a deposit to establish credit with the company. The prayer of the petitioner in all other particulars is hereby denied.

By order of the Commission, this twentieth day of May, 1915, dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF THE KENNEY, CHEST-
NUT AND FARMERS MUTUAL TELEPHONE COMPANY FOR
AUTHORITY TO CHANGE RATES.

Case No. 3576.

Decided May 20, 1915.

**Discrimination in Favor of Stockholders, and Subscribers Owning Tele-
phones Eliminated — Requirement of Advance Payment for
Six Months Period Disapproved.**

OPINION AND ORDER.

This is an application for authority to discontinue discriminatory rates. Application sets forth that the petitioner is a public utility engaged in the management and operation of a rural telephone system in Dewitt and Logan Counties, Illinois, with its principal place of business in the village of Kenney, and that as such public utility it is subject to the provisions of "*An Act to Provide for the Regulation of Public Utilities*" now in force in the State of Illinois.

Application further sets forth that the rates of the petitioner now in force and effect are as follows:

Telephones owned and maintained by the company.....	\$15 00 per year
Telephones owned and maintained by the subscribers..	8 00 per year
Stockholders' telephones — average assessment	5 00 per year
(All subscribers, excepting stockholders, are classified as "renters.")	

Application is made for authority to discontinue the rates now in force and effect and to establish, in lieu thereof, a uniform rate of \$12.00 per year, such rate to apply to all subscribers, without discrimination; also to collect, in advance, one-half of such annual rental on or before the first Tuesday of the month of March and the remaining half on or before the first Tuesday of the month of September in each year.

Conference Ruling No. 8* and other decisions heretofore made by this Commission provide that a stockholder cannot

* See Commission Leaflet No. 31, p. 31.

be given any greater or less or different rate than the rate charged other subscribers.* Conference Ruling No. 15† provides that it is unlawful to grant any reduction from the regular rate on account of subscribers owning their telephones, and the rates that the petitioner now has in effect for subscribers who are stockholders, and for subscribers who own their telephones, are discriminatory.

The proposed rule governing the payment of telephone rentals in advance for a period of six months appears to be unreasonable. It is recognized that a telephone company has the right to establish reasonable rules and regulations governing the conduct and operation of its business, and a rule which provides for the payment of telephone rentals within a prescribed period is a regulation of the permitted character. It appears, however, that it would be unreasonable to require subscribers to pay for service in advance for a period of six months and for that reason the Commission does not approve the proposed rule governing the payment of telephone rentals.

It is, therefore, ordered, That the petitioner, Kenney, Chestnut and Farmers Mutual Telephone Company, discontinue the schedule of rates or charges that it now has in force and effect, as set forth in the application, and establish in lieu thereof, a rate of \$12.00 per year, such rate to apply to all subscribers, without discrimination.

It is further ordered, that the rate of \$12.00 per year herein authorized shall become effective as of June 1, 1915, and shall be filed, posted and published by said petitioner as provided by Section 34 of an Act entitled, "*An Act to Provide for the Regulation of Public Utilities.*"

By order of the Commission, this twentieth day of May, 1915, dated at Springfield, Illinois.

* Orders requiring the elimination of discrimination in favor of stockholders were issued in cases involving the following companies:

Cropsey Telephone Company. No. 3456. May 6, 1915.

St. James Telephone Company. No. 3506. May 6, 1915.

† See Commission Leaflet No. 37, p. 457.

IN THE MATTER OF THE APPLICATION OF THE BLANDINSVILLE
SWITCHBOARD COMPANY FOR AUTHORITY TO CHANGE
RATES.

Case No. 3739.

Decided May 20, 1915.

**Discrimination in Favor of Subscribers Owning Telephones Eliminated —
Additional Classifications Authorized.**

OPINION AND ORDER.

Application in the above entitled matter sets forth that the petitioner is a public utility engaged in the management and operation of a telephone system in and around the village of Blandinsville, McDonough County, Illinois, and that as such public utility it is subject to the provisions of "*An Act to Provide for the Regulation of Public Utilities*" now in force in the State of Illinois.

Application further sets forth that the rates of the petitioner now in force and effect are as follows:

Business telephones — subscribers owning the tele- phones	\$10 00 per year
Business telephones — company owning the telephones.	16 00 per year
Individual line residence telephones — subscribers own- ing the telephones	9 00 per year
Individual line residence telephones — company owning the telephones	12 00 per year
Two-party line residence telephones — subscribers own- ing the telephones	8 00 per year
Two-party line residence telephones — company own- ing the telephones	11 00 per year
Three-party line residence telephones — subscribers own- ing the telephones	7 60 per year
Three-party line residence telephones — company own- ing the telephones	10 60 per year
Four-party line residence telephones — subscribers own- ing the telephones	7 00 per year
Four-party line residence telephones — company own- ing the telephones	10 00 per year
Rural party line telephones — switching service only...	2 50 per year

Application is made for authority to discontinue the rates that apply to subscribers who own their telephones, and to charge the regular schedule rate for the class of service furnished to all subscribers; also to establish two classifications for business telephones and uniform rates under these classifications.

"In the Matter of Rates and Charges Applicable to Subscribers Who Own Their Telephones," Conference Ruling No. 15,* and in other decisions heretofore made, the Commission held that it is unlawful to grant any reduction from the regular rate on account of the subscribers owning their telephones, and the rates that the petitioner now has in effect for subscribers who own their telephones are discriminatory and unlawful.

Petitioner proposes a rate of \$15.00 per year for individual line business telephones which is slightly less than the present rate for this class of service, and \$12.00 per year for two-party line business telephones, which is a new classification, and, in the light of the information at hand, these rates appear to be fair and reasonable.

It is, therefore, ordered, That the rates and charges of the petitioner, Blandinsville Switchboard Company, of Blandinsville, McDonough County, Illinois, now in force and effect shall be discontinued and the following schedule substituted in lieu thereof:

Individual line business telephones.....	\$15 00 per year
Two-party line business telephones.....	12 00 per year
Individual line residence telephones.....	12 00 per year
Two-party line residence telephones.....	11 00 per year
Three-party line residence telephones.....	10 60 per year
Four-party line residence telephones.....	10 00 per year
Rural party line telephones — switching service only..	2 50 per year

* See Commission Leaflet No. 37, p. 457.

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It is further ordered, That the rates herein authorized shall become effective as of June 1, 1915, and shall be filed, posted and published by said petitioner as provided by Section 34 of an Act entitled, "An Act to Provide for the Regulation of Public Utilities."

By order of the Commission, this twentieth day of May, 1915, dated at Springfield, Illinois.

KANSAS.

Public Utilities Commission.

**IN THE MATTER OF THE APPLICATION OF THE MISSOURI AND
KANSAS TELEPHONE COMPANY FOR PERMISSION TO
ABANDON ITS EXCHANGE AT EUDORA, KANSAS.**

Docket No. 926.

Decided June 3, 1915.

Discontinuance of Exchange Authorized.

ORDER.

Now, on this third day of June, 1915, comes on to be finally heard, the application of The Missouri and Kansas Telephone Company, a corporation, for permission to abandon its exchange at Eudora, Kansas, the same having been duly heard and submitted, and an investigation of the matters and things involved having been had at Eudora, Kansas, on the ninth day of December, 1914; and after duly considering the evidence showing that there is at this time a telephone company furnishing service at Eudora, Kansas, and the said company being willing to attach to its switchboard the toll lines of The Missouri and Kansas Telephone Company, and the said The Missouri and Kansas Telephone Company having at this time only twelve subscribers on its switchboard at Eudora, and it being shown that the granting of this application will in nowise interfere with sufficient and efficient service to the public at Eudora, and the Commission being fully advised in the premises finds that the application of the said petitioner should be granted.

It is, therefore, by the commission ordered, That The Missouri and Kansas Telephone Company is hereby given authority to abandon its said exchange at Eudora, Kansas, and cease giving service at such exchange when its toll lines

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have been properly attached to the switchboard of the company now operating at Eudora, Kansas, and after thirty days' written notice has been given its subscribers to the exchange now operated by it at Eudora, Kansas, of its intention to discontinue said service.

It is further by the Commission ordered, That the said The Missouri and Kansas Telephone Company be allowed to withdraw the schedule of rates filed by it with this Commission for its exchange at Eudora, Kansas, when the requirements herein made have been fully complied with.

Dated June 3, 1915.

MAINE.

Public Utilities Commission.

IN THE MATTER OF A COMPREHENSIVE CLASSIFICATION OF SERVICE FOR EACH PUBLIC UTILITY, AS REQUIRED BY SECTION 26, CHAPTER 129, PUBLIC LAWS OF MAINE FOR THE YEAR 1913.

General Order.

Dated May 20, 1915.

Comprehensive Classification of Service for Telephone and Telegraph Companies Made.

GENERAL ORDER.

This Commission has for some time had under consideration the matter of a comprehensive classification of service for public utilities, as required by the Utilities Act. We have held several public hearings, talked with many people and otherwise made a full and careful investigation of this matter.

The service performed by some utilities classifies itself. With reference to a classification of the service performed by others, the task would be difficult if any attempt were made to provide for a technical and intimate classification, but the statute uses the word "comprehensive," and, with this expression of the legislature in mind, we have endeavored to perform our duty in such a manner as to cause no hardship to any utility and at the same time give to the public a broad classification, which may contain such subdivisions not inconsistent with the general plan hereof as the business of each utility may require, within which schedules of rates might be filed which could be readily understood.

And now, after such investigation and consideration,

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It is ordered and determined, (1) That notice hereof, and of our order* with reference to the filing of schedules of rates as required by Sections 19 and 20 of said Chapter 129, and of our order† with reference to keeping on file portions of such schedules, as required by Section 21 of said Chapter 129, be given to each public utility in the State by sending to each by mail a certified copy of this and each of the two above named orders.

(2) That from and after July 1, 1915, and until further order of this Commission, the following shall be the classification of the service by each public utility in said state, that is to say:

* * * * *

The following shall be the classification of service by

TELEPHONE COMPANIES.

Local Exchange Service, which shall include unlimited, as well as measured service, at an annual rate for one or more parties on each line; coin box service, if any is offered. Also the following service, if all or any of such service is offered, viz.: Directory listings; equipment, (including auxiliary equipment and the changing or moving of any equipment); private branch exchange; service to associations and clubs, boarding and lodging houses, civic and semi-business organizations; day to day service; service to a municipality; short period talking; short term service.

Toll Service, which shall include all service rendered where any charge is made in addition to or different from the charges embraced under the above classification for local exchange service.

* See Commission Leaflet No. 43, p. 390.

† See Commission Leaflet No. 43, p. 388.

‡ Those portions of the order fixing classifications of service for steam and electric railways, gas companies, electrical companies, express companies, water companies, vessels, wharfingers and warehousemen have been omitted.

The following shall be the classification of service by

TELEGRAPH COMPANIES.

1. Service for which any charge is made for messages sent from, or received at, any office maintained by the company, including any messenger or other service connected therewith.

2. Service in the transmission of credit of any sort, or authorizing the payment of money at a place other than that from which the message is sent.

3. All other service offered by the company.

Each Public Utility is required to conform its schedules of rates, tolls and charges to foregoing classification, within the class or group to which each such utility belongs.

Given under the hand and seal of the Public Utilities Commission, at Augusta, this twentieth day of May, A. D. 1915.

GENERAL ORDER CONCERNING THE KEEPING ON FILE AT CERTAIN PLACES CERTAIN DESIGNATED PORTIONS OF THE SCHEDULE OF RATES OF PUBLIC UTILITIES.

General Order.

Dated May 20, 1915.

Regulations Concerning the Keeping on File of Rate Schedules.

GENERAL ORDER.

Section 19 of Chapter 129, Public Laws of Maine for the year 1913, provides for the filing, with this Commission, of schedules of rates by each public utility, within a time to be fixed by the Commission. An order for such filing has already been made and served.

Section 21 provides as follows:

"Section 21. A copy of so much of said schedules as the Commission shall deem necessary for the use of the public shall be printed in plain type and kept on file in every station or office of said public utility where payments are made by the consumers or users, open to the public under such rules and regulations as may be prescribed by the Commission."

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The Commission, now having under consideration the matters involved in said Section 21,

It is ordered, That each public utility in any of the classes hereinafter designated shall, on or before July 1, 1915, cause to be placed (and thereafter kept) on file, at the places designated under each class, such portions of the schedule of its rates for all kinds of its service as is particularly set forth under the particular class to which the utility belongs. Such schedules are to be plainly printed or typewritten, and are to be open to the public during usual business hours. No change shall be made therein until such change has become effective and proper by compliance with the following section of said Chapter 129:

"Section 23. No change shall hereafter be made in any schedule including schedules of joint rates, except upon ten days' notice to the Commission, and all such changes shall be plainly indicated upon existing schedules or by filing new schedules in lieu thereof ten days prior to the time the same are to take effect."

The following are the classes above referred to and the rules with reference to schedules of rates to be kept on file:*

* * * * *

CLASS G.

Telegraph Companies.

Each telegraph company, at each place it maintains where payment for any service may be made, shall keep on file a full copy of its schedule of rates, in the same form as the original (and any effective changes or amendments thereto) on file with this Commission.

* * * * *

CLASS K.

Telephone Companies.

Each telephone company, at each place it maintains where payment for telephone service may be made, shall keep on

* Those portions of the order applying to steam and electric railroads, water companies, express companies, gas companies, electric companies, wharfingers, warehousemen and vessels have been omitted.

file so much of its schedule of rates as will clearly show the charges of such public utility between such place and any other place which is shown, by the schedules on file with this Commission, to be available by the service offered by such public utility; provided, however, that the word "place" hereinbefore used shall not be construed to mean so-called prepayment pay stations or other places where no servant of such telephone company is customarily present.

Attention is called to Section 20 of said Chapter 129, which reads as follows:

"Section 20. Every public utility shall file with and as a part of such schedules all rules and regulations that in any manner affect the rates charged or to be charged for any service."

It will be seen that any rule or regulation, printed or otherwise, which affects the rates charged or to be charged, and which any public utility enforces or requires compliance with, is a part of the rate and must be made a part of the schedules of rates to be kept on file as above ordered.

Given under the hand and seal of the Public Utilities Commission, at Augusta, this twentieth day of May, A. D. 1915.

IN THE MATTER OF THE FILING BY EACH PUBLIC UTILITY,
SCHEDULES OF ITS RATES, TOLLS AND CHARGES WITH THIS
COMMISSION, UNDER THE PROVISIONS OF SECTION 19,
CHAPTER 129, PUBLIC LAWS OF THE STATE OF MAINE FOR
THE YEAR 1913.

General Order.

Dated May 20, 1915.

Filing of Rate Schedules Ordered — Directions for Filing Set Forth.

GENERAL ORDER.

Section 19, Chapter 129, Public Laws of the State of Maine for the year 1913, provides as follows:

"Every public utility shall file with the Commission within a time to be fixed by the Commission, schedules which shall be open to public inspection."

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tion, showing all rates, tolls and charges which it has established and which are in force at the time for any service performed by it within the State, or for any service in connection therewith or performed by any public utility controlled or operated by it or in conjunction therewith. The rates, tolls and charges shown on the schedules first to be filed shall not exceed the rates, tolls and charges which were in force on January 1, 1913, except that the rates, tolls and charges of utilities under the jurisdiction of the Interstate Commerce Commission, shown on the schedules first to be filed, shall be the rates, tolls and charges in force when this act goes into full effect."

Railroads operated by steam within this State have already filed their schedules of rates. This order does not apply to such railroads, a separate order having been already made with reference to steam railroads.

Particular attention is called to that portion of Section 19 above quoted which provides that the rates shown on the schedules first to be filed shall not exceed those which were in force on January 1, 1913. Care should be taken in causing the first filing to be in strict compliance with this section.

If, after such first filing, any change is to be made, it must be accomplished in the manner provided in Section 23, which is as follows:

"No change shall hereafter be made in any schedule, including schedules of joint rates, except upon ten days' notice to the Commission, and all such changes shall be plainly indicated upon existing schedules or by filing new schedules in lieu thereof ten days prior to the time the same are to take effect."

Particular attention is also called to Section 20, which provides that

"Every public utility shall file with, and as a part of, such schedules all rules and regulations that in any manner affect the rates charged or to be charged for any service."

Some public utilities have had written rules and regulations. Others have had none, but it is well known that, even in the case of those utilities which have had written rules and regulations, there have also been many customs and practices which were never written but which have been so

long continued as to have gained all the force and effect of a rule or regulation in written form. Therefore, each utility should exercise extreme care in causing each of its rules and regulations to appear as a part of its schedules of rates.

This Commission has, either by public hearing or by investigation, informed itself with reference to the matter of the schedules of various public utilities, and now, after mature consideration,

It is ordered, That, in accordance with the provisions of Sections 19 and 20 of Chapter 129, Public Laws of the State of Maine for the year 1913, each public utility within the State of Maine shall, on or before July 1, 1915, file in the office of the Public Utilities Commission of the State of Maine, at Augusta, in said State, full schedules, which shall be open to public inspection, showing all rates, tolls and charges which it has established and which are in force for any service performed by it within the State, or for any service in connection therewith or performed by any public utility controlled or operated by it or in conjunction therewith; provided that the rates, tolls and charges shown on the schedules first to be filed shall not exceed the rates, tolls and charges which were in force on January 1, 1913.

Each public utility shall also file with and as a part of such schedule all rules and regulations that in any manner affect the rates charged or to be charged for any service.

Each public utility shall cause its said schedules of rates, tolls and charges to conform to the classification heretofore provided for by this Commission, a copy of which accompanies this order. Such schedules shall conform to the following rules and regulations, to wit:

(1) Schedules shall be printed or typewritten, on one side only, on sheets measuring 10½ inches in length and 8 inches in width, bound or fastened together so that sheets may be removed. The entire schedule, including all rules and regulations, shall be contained within a stiff or heavier flexible binder. Such bound schedule shall be identified upon its cover by the name of the company, partnership or person filing the same.

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(2) Each complete schedule of rates shall have a title page containing the words " State of Maine, Public Utilities Commission;" the schedule number; full name of the utility filing the same; the date when filed and the date when effective; and the signature of the officer of the utility who is authorized to authenticate such schedule and cause the same to be filed.

If the schedule of rates within any class requires the use of but one sheet, that sheet shall contain, in the upper right hand corner, the word " Class," followed by its proper figure or letter. In the upper left hand corner there shall be printed or typewritten " M. P. U. C.," followed by the schedule number, and immediately beneath shall be printed or typewritten the name of the utility filing the schedule. Then upon the sheet shall be printed the schedule of rates, together with all matter concerning rates pertaining to the service offered within the particular class, with every rule, regulation, condition, limitation, restriction or usage governing or in any manner affecting such rate or service, except as may herein be otherwise provided.

If more than one sheet is required to contain such schedule and regulations within any given class, each extra sheet shall carry the same headings, but be numbered with the next higher number.

When any schedule is revised, a new sheet must be furnished, in general form like the one which it is to replace, and must show whether such revision is first, second, third, etc.

At the bottom of each sheet must appear the date when filed, the date when effective and the name and title of the officer filing the same.

(Annexed hereto is a rough form for title page and one for a schedule sheet, with some suggestions.)*

So far this order applies generally to each public utility, no matter to what particular group it may belong. The following provisions, as will be seen, apply to particular groups, and the officers of each utility will look in their par-

* Omitted from this Leaflet.

ticular group for instructions, rules and regulations which relate to their particular class of utility:*

Rules and Regulations Applying Exclusively to Telephone Companies.

1. Schedules of the rates of telephone companies shall be so divided as to show:

- (1) exchange service rates and
- (2) toll service rates.

The rates for exchange service shall not appear upon the same sheet as the rates for toll service.

2. Exchange service shall be divided into

- (a) unlimited service and
- (b) measured service.

These rates may be listed on the same sheet or group of sheets.

Under the title "unlimited exchange service rates" shall appear the rates to be charged for

- (1) individual line,
- (2) 2-party line,
- (3) 4-party line,
- (4) 6-party line and
- (5) rural or 15 or more party line.

If, for any of the above named service, a different rate is charged for business and residence purposes, the rates for each shall be separately listed.

Under the title "measured service rates" shall appear the rates to be charged for

- (1) individual line,
- (2) 2-party line and
- (3) more than 2-party line,

together with the number of messages to which each is entitled, and, if a different rate for business and residence service is to be charged, the rates for each shall be listed

* Those portions of the order applying exclusively to steam and electric railroads, express companies, gas and electrical companies, water companies, vessels, wharfingers and warehousemen have been omitted.

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separately. Under this service any rate for additional messages above that allowed at the regular rate shall be distinctly listed.

3. If any limit is fixed as to the area within which any service offered is to be enjoyed at the rate specified, such limit must be clearly listed as a part of the rate.

4. If any additional charge is to be made, or any different rate enforced, for any of the following, such additional charge or such different rate must be clearly indicated upon the schedule sheet to which such charge or rate applies, or by appropriate reference thereon to some sheet or sheets where such additional charges or different rates are clearly indicated, viz.:

The changing or moving of any equipment or the furnishing of any auxiliary equipment;
Charges for additional mileage beyond the exchange area.

Private branch exchange;

Second party use of telephone;

Service to associations, clubs, boarding or lodging houses, civic and semi-business organizations;

Service to municipalities;

Short term service;

Telegram toll service;

Temporary suspension of any service.

5. If toll service is offered, the schedules of rates therefor must clearly show the rate to each place to which a subscriber may have service; the length of time under such rate; the rate at which any number of additional minutes service may be had; messenger charges, if any; together with all conditions or limitations, rules or regulations which in any manner govern, control or affect the service offered.

6. If a written contract for any class of service is to be required, the schedule of rates applying thereto must state the necessity for such contract, and a copy of the contract to be required must at all times be open to public inspection at all places where schedules are required to be kept on file.

7. If any discount for prompt payment is to be made, or if any advance payment is required, schedules of rates must clearly show the terms and conditions thereof.

Rules and Regulations Applying Exclusively to Telegraph Companies.

1. Schedules of rates must show the places to which messages may be sent and from which messages may be received and all charges for the service to be rendered.

2. If private lines are to be installed and service over the same given, the rates therefor must be stated.

3. If any form of credit is to be transmitted by telegram, the rates therefor must be clearly stated.

4. If so-called messenger boy service is to be rendered, the schedules must show the charges to be made therefor.

5. All conditions and limitations, rules or regulations which in any way govern, control or affect the service offered must appear on or in connection with the schedules filed.

Given under the hand and seal of the Public Utilities Commission, at Augusta, this twentieth day of May, 1915.

IN THE MATTER OF THE APPLICATION OF ADA SANBORN *et al.*,
TO BUILD A SHORT EXTENSION OF TELEPHONE LINE INTO
TERRITORY ALREADY OCCUPIED.

Decided May 20, 1915.

**Application for Extension of Line Into Occupied Territory Dismissed
Without Prejudice.**

APPEARANCES:

E. E. Goodwin and *C. C. Whitehouse*, for the petitioners.

J. Merrill Lord, for the respondent.

OPINION AND ORDER.

The petitioners, five in number, presented to this Commission a petition in which it is stated that they are the owners of a short telephone line in Newfield, in the county of York, and that they have an arrangement with another line, known as the Dow line, by which they obtain certain service.

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The petition recites that they are unable to telephone to a certain village known as West Newfield, on account of their line not extending to that village, and asks that they may be given permission to build about a mile of telephone line into this village, although the New England Telephone and Telegraph Company, through one of its subsidiary companies, is furnishing service in the same village.

Upon said petition a hearing was ordered and notice thereof given to the petitioners and to the New England Telephone and Telegraph Company. At the hearing, held at Springvale, in the town of Sanford, a part of the petitioners were present and stated their grievance. During the hearing it developed that the Ossipee Valley Telephone Company is the corporation which, under its chartered rights, is granting telephone service in the town of Newfield and in other adjoining towns, and that the New England Telephone and Telegraph Company controls the Ossipee Valley Telephone Company by virtue of an operating contract. It also developed that one or more persons besides those who signed the petition had some interest in petitioners' telephone line, and that these petitioners and several others petitioned the municipal officers of Newfield some time ago for pole rights in the town of Newfield, as evidenced by a copy of the records of the town of Newfield; and it further appeared from said records that such petition was granted October 17, 1914. The petition to the municipal officers and their order would seem to give the individuals who petitioned the right to set poles to the very places mentioned in the pending petition.

One question, of course, is whether rights granted to a different group of individuals than those who signed the pending petition (even though the signers of the pending petition are included in that group), would give to a part of those individuals the right to petition this Commission for the rights asked for.

We also have some question as to whether or not the Ossipee Valley Telephone Company ought not to have been made at least a party to these proceedings.

At the hearing, and in a communication subsequently re-

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ceived, it appeared that the petitioners intend to form a corporation which will succeed to the rights of whoever owns the telephone line described in the petition and to any rights granted by the municipal officers.

In view of these latter facts, and of our doubt as to whether all proper parties are brought before the Commission, we feel that we ought not to attempt to determine the matters involved in the petition, but will leave the situation as it now exists, with an opportunity later for the new company to petition if it sees fit.

There seems to be a probability that an adjustment of differences between the Ossipee Valley Telephone Company and the petitioners may be made, and it may be that no future proceedings will be necessary.

It is, therefore, ordered, That the petition be dismissed, but without prejudice to any person or corporation.

Given under the hand and seal of the Public Utilities Commission, at Augusta, this twentieth day of May, A. D. 1915.

IN THE MATTER OF THE APPLICATION OF THE MOOSEHEAD TELEPHONE AND TELEGRAPH COMPANY, THE NORTHERN MAINE TELEPHONE AND TELEGRAPH COMPANY, THE NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY AND THE MOOSEHEAD TELEPHONE COMPANY FOR AN ORDER AUTHORIZING THE PURCHASE OF CERTAIN FRANCHISES AND PROPERTIES OF THE LAST THREE PETITIONERS BY THE CORPORATION FIRST NAMED.

Decided May 27, 1915.

Consolidation of Telephone Properties in the Interest of Improved Service Authorized — Issue of Stock of New Company Sufficient to Purchase Franchises and Properties of Merged Companies Authorized — Cost of Reproduction less Depreciation Method Used to Determine Present Value.

APPEARANCES:

M. B. Jones, for petitioners.

W. H. Monroe, for the Milo Telephone Company and the Brownville Telephone Company.

OPINION AND ORDER.

This is a joint application by the Moosehead Telephone and Telegraph Company, the New England Telephone and Telegraph Company, the Northern Maine Telephone and Telegraph Company and the Moosehead Telephone Company for an order of this Commission authorizing the first named corporation to purchase certain franchises and properties of the last three petitioners, and for the last three to sell to the first. Amendment was subsequently filed, based on an error in the appraisal of the property to be purchased of the New England Telephone and Telegraph Co., reducing the price to be paid therefor to \$120,950, and the total amount of stock to be issued by the Moosehead Telephone and Telegraph Company to \$170,200, being in each instance a reduction of \$400.

On the petition a public hearing was ordered to be held at the offices of this Commission, at Augusta, on May 25, 1915. Notice of such hearing was proved to have been given as ordered. From the evidence adduced at the hearing it appeared and we find that the Moosehead Telephone and Telegraph Company is a corporation lately formed under the General Law for the purpose of doing a general telephone business in what is known as the "Moosehead region." Its authorized capital stock is \$250,000. The territory to be served embraces that now covered by the Northern Maine Telephone and Telegraph Company, the Moosehead Telephone Company and a portion of that covered by the New England Telephone and Telegraph Company. This territory is fully described in the petition.

The reason for the formation of this new company grew out of the necessities of the patrons of the three existing companies in this Moosehead region, and which necessities were not being properly served by such companies operating separately. Both the Moosehead and the Northern Maine are largely owned by either private individuals or by corporations not exclusively engaged in the telephone business, with the result that these lines, originally built for purposes other than serving the general public, were not in

the first instance so built as to be permanent in character or afford adequate and proper service for the customers who now desire to use these lines.

The necessities for the use of the telephone in the Moosehead region have multiplied very rapidly during the last few years, and require facilities capable of giving prompt and adequate service. The existing companies realized these necessities, and, in conference, concluded that the customers in this region could be properly served only by the formation of a new corporation, which should take over all the properties, improve them, operate them under new management and thus be able to meet the demands of the public.

A competent engineer, who testified before the Commission went carefully over the physical properties of the three companies which are to be united by sale of such properties to the Moosehead Telephone and Telegraph Company. He prepared and presented to the Commission, in written form, a detailed report of all the physical property to be purchased and sold, with a value based upon each unit of such property and an estimate of the present entire value of the aggregate of the properties of each of the companies whose franchises and properties are to be purchased. These estimates and values have been carefully gone over by the Commission, and they seem to be fair. In arriving at the value of the physical properties, the engineer determined first the reproduction cost of the various units of such properties, and used the result so obtained as one of the elements for determination of the present value of such properties. In the case of the New England Telephone and Telegraph Company its plant and properties had been kept up to date, so that the element of obsolescence and inadequacy did not materially decrease the present value below the reproduction cost. In the cases of the Northern Maine Telephone and Telegraph Company and the Moosehead Telephone Company obsolescence and inadequacy reduced the reproduction cost about 18 per cent. and this was necessary on account of the manner in which the lines of each of

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these companies were originally built, the failure to make necessary repairs and the failure of each company to keep its plant and equipment up to date, resulting in the necessity of expending a considerable amount of new money in bringing each of these plants to a condition where proper service could be given.

Although the authorized capital stock of the Moosehead Telephone and Telegraph Company is \$250,000, the petition asks only for the present issue of \$170,200, which is the exact amount required to purchase the franchises and properties of the other three companies at the value fixed by the engineer and agreed to by the three selling corporations at meetings properly called and held. The issue of the balance of such capital stock is not at present asked for, but such balance is to remain in the treasury until such time as its sale becomes necessary in order to produce money to make improvements, extensions and additions to the plant of the purchasing company.

The amount fixed as the value of the franchises and properties of the Northern Maine Telephone and Telegraph Company, and agreed upon by that company, is \$21,600; of the Moosehead Telephone Company \$27,650; and of the New England Telephone and Telegraph Company \$120,950. These values, upon the evidence presented, are approved by this Commission.

It may not be out of place to say a word in regard to the Milo Telephone Company and the Brownville Telephone Company. Each of these corporations is organized under the General Law and is doing business in its respective territory. While the franchises of the New England Telephone and Telegraph Company authorized it to do business in the same territory, it has not done, and is not actually doing, any business in such territory, except to make connections at the switchboards of the Milo and Brownville companies for toll business. The only objection of these two companies arose out of an apprehension that the newly formed company might obtain authority to do business within the territory occupied by the Milo Telephone Com-

pany and the Brownville Telephone Company. It appearing, however, that the new company does not propose so to do, and that in any event it would have to comply with Sections 27 and 28 of the Utilities Act before it could serve such territory, the objections of the Milo and Brownville companies appear not to be well grounded.

After hearing all the evidence presented and maturely considering the same, it appears to us that the sale by the New England Telephone and Telegraph Company, the Northern Maine Telephone and Telegraph Company and the Moosehead Telephone Company of the franchises and properties described in the pending petition, and the purchase of the same by the Moosehead Telephone and Telegraph Company, is reasonable, desirable and necessary in the interests of the public, and that an order authorizing the same ought to be made. It further appears and we find that the capital stock of the Moosehead Telephone and Telegraph Company to the amount of \$170,200 is required in good faith for the purposes enumerated in Section 35, Chapter 129, Public Laws of 1913, and that the issue thereof, under the conditions hereinafter imposed, is consistent with public policy, and

It is ordered, 1. That the petitioner, the Moosehead Telephone and Telegraph Company, be, and hereby is, authorized to issue of its capital stock an amount equal to the par value of \$170,200, and use the same for the purchase of the franchises and properties of the New England Telephone and Telegraph Company, the Northern Maine Telephone and Telegraph Company, and the Moosehead Telephone Company, fully set forth and described in the pending petition;

2. That the New England Telephone and Telegraph Company is hereby authorized to sell to the Moosehead Telephone and Telegraph Company the properties and franchises described in the pending petition, for the sum of \$120,950, and receive in payment therefor stock of the Moosehead Telephone and Telegraph Company, at par, to the same amount;

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3. That the Northern Maine Telephone and Telegraph Company is hereby authorized to sell to the Moosehead Telephone and Telegraph Company its franchises and properties described in the pending petition, for the sum of \$21,600, and to receive in payment therefor stock of said Moosehead Telephone and Telegraph Company, at par, to the amount of \$21,600;

4. That the Moosehead Telephone Company is hereby authorized to sell to the Moosehead Telephone and Telegraph Company its franchises and properties described in the pending petition, for the sum of \$27,650, and to receive in payment therefor stock of the Moosehead Telephone and Telegraph Company, at par, to the amount of \$27,650;

5. That the Moosehead Telephone and Telegraph Company is hereby authorized to purchase the franchises and properties of the New England Telephone and Telegraph Company, the Northern Maine Telephone and Telegraph Company and the Moosehead Telephone Company described in the pending petition, at the values for each set forth in said petition, and to pay therefor the amount so set forth in stock of said Moosehead Telephone and Telegraph Company, at par;

6. That the purchase by the Moosehead Telephone and Telegraph Company of the above named franchises and properties of the New England Telephone and Telegraph Company shall be subject to the terms and provisions of certain leases now in existence between said New England Telephone and Telegraph Company and the Brownville Telephone Company, the Lagrange and Medford Telephone Company and the Milo Telephone Company;

7. That each of the above named petitioners report to this Commission in detail, supported by the affidavit of one of its principal officers, its doings hereunder, within twenty days after the first day of August, 1915, and within twenty days after the first day of each alternate month thereafter, until it shall cease to have taken any action hereunder.

Given under the hand and seal of the Public Utilities Commission, at Augusta, this twenty-seventh day of May, A. D. 1915.

MICHIGAN.

Railroad Commission.

**IN THE MATTER OF THE APPLICATION OF THE VALLEY HOME
TELEPHONE COMPANY AND W. B. SERVISS, OF SAGINAW,
MICHIGAN, FOR AN ORDER PERMITTING THE CONSOLIDA-
TION OF THE TELEPHONE PROPERTIES AT OWENDALE,
HURON COUNTY, AND GAGETOWN, TUSCOLA COUNTY,
STATE OF MICHIGAN.**

D-883.

Decided January 6, 1915.

**Purchase of Competing System and Consolidation of Property Approved
— Physical Connection Ordered.**

ORDER.

The Valley Home Telephone Company and W. B. Serviss, of Saginaw, Michigan, having filed petition herein on the twenty-fifth day of November, A. D. 1914, for an order permitting said Valley Home Telephone Company to purchase from W. B. Serviss the telephone property and facilities embraced within the telephone exchanges at Gagetown in the county of Tuscola, and Owendale in the county of Huron, and to effect and maintain a unification of the property and facilities of said exchanges with the property of the Valley Home Telephone Company;

And it appearing to said Commission that the convenience of the public will be served by such sale upon the terms and conditions herein imposed,

Therefore, it is hereby ordered, That the said petitioners, the Valley Home Telephone Company and W. B. Serviss, are hereby authorized to execute the agreement for the sale of said properties, and the said Valley Home Telephone Company authorized to consolidate the telephone exchanges at Gagetown, in the county of Tuscola, and

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Owendale, in the county of Huron, with the property of the Valley Home Telephone Company, and to pay to the said W. B. Serviss the agreed consideration of \$12,000.

And it is further ordered, That said sale and unification of said properties mentioned be upon the express condition that physical connection be made between the telephone facilities of the said Gagetown exchange and the said Owendale exchange with the lines and facilities of the Consolidated Telephone Company of Bad Axe, Michigan, and that telephone service be accorded by the telephone facilities of the Consolidated Telephone Company and with the facilities of the Valley Home Telephone Company and any and all other lines connected with such exchanges, upon the terms and conditions and for the tolls and charges now governing such exchanges.

Dated January 6, 1915.

IN THE MATTER OF THE APPLICATION OF THE MICHIGAN STATE
TELEPHONE COMPANY FOR PERMISSION TO SELL ITS
PROPERTY AT ALLEN, MICHIGAN, TO THE ALLEN MUTUAL
TELEPHONE COMPANY.

D-915.

Decided April 27, 1915.

**Sale of Property to Effect Unification of Systems Approved — Service to
Present Subscribers of Each Company to Be Furnished Over
Lines of Unified Company.**

ORDER.

Application was filed in the above entitled matter on the thirty-first day of March, A. D. 1915, and a hearing ordered in the office of the Michigan Railroad Commission at Lansing, at 11:00 A. M. Thursday, the fifteenth day of April, 1915, at which time *Mr. G. M. Welch*, commercial superintendent, appeared on behalf of the Michigan State Telephone Company, and *Mr. J. J. Graham*, president, on behalf of the Allen Mutual Telephone Company. Evidence was submitted in support of such application.

And it appearing to this Commission that the convenience of the public will be served by such sale upon the terms and conditions herein imposed.

Therefore, it is hereby ordered, That said petitioner, the Michigan State Telephone Company, be, and it is hereby, permitted to sell to said Allen Mutual Telephone Company the property of said Michigan State Telephone Company embraced and comprised within its exchange at Allen, Michigan, and to effect and maintain a unification of the property of the said Michigan State Telephone Company and the said Allen Mutual Telephone Company, mentioned and set forth in the petition, for the sum of \$600.

And it is further ordered, That said sale and unification of the properties mentioned be upon the express condition that all persons, firms and corporations possessing and enjoying telephone service with said Michigan State Telephone Company or the said Allen Mutual Telephone Company, through its exchange at Allen, Michigan, shall continue to have, possess and enjoy such telephone service through the unified lines and property of said Michigan State Telephone Company and also over and by the line or lines of the Allen Mutual Telephone Company.

Dated April 27, 1915.

MISSOURI.

Public Service Commission.

**IN THE MATTER OF THE SUSPENSION AND INVESTIGATION OF
RATES, CHARGES AND REGULATIONS OF THE CAPE GIRAR-
DEAU BELL TELEPHONE COMPANY AT CAPE GIRARDEAU,
MISSOURI.**

Case No. 602.

Decided May 24, 1915.

Elimination of Combination Rates Authorized.

ORDER.

It appearing that the Cape Girardeau Bell Telephone Company has filed with this Commission its P. S. C. Mo. No. 2 first revised copy, effective February 1, 1915, containing rates and terms of service for the local telephone exchange at Cape Girardeau, Missouri, the same being a discontinuance of the combination rates for both business and residence telephones, amounting to a reduction of 25 cents from the sum of the separate standard rates of each such service, and the elimination of said rates constituting a corresponding increase to subscribers for the combination service;

The Commission, by order made on the twentieth day of January, 1915, suspended the effective date of said rates for a period of one hundred and twenty days, to and including May 31, 1915, unless otherwise ordered by the Commission, pending an investigation of the reasonableness of the proposed rates; and a hearing having been held by a member of this Commission in said matter at the city of Cape Girardeau, Missouri, on the twenty-eighth day of April, 1915, and it appearing from the evidence that said Cape Girardeau Bell Telephone Company charged at the said city for each business telephone \$2.75 per month, and

for each residence telephone \$1.50 per month; that where one individual was a subscriber to both the business and residence telephones, the rate charged for the business telephone was \$2.60 per month and the rate charged for the residence telephone was \$1.40 per month, making a reduction of 25 cents; and it appearing that said reduction in charges to persons using both residence and business telephones is an unlawful discrimination; and it further appearing that the proposal to remove said discrimination by increasing the rates for telephone service as proposed by the tariff now on file (which has heretofore been suspended) to the sum of \$2.75 per telephone per month for all persons using a business telephone, and \$1.50 per telephone per month for all persons using a residence telephone, is reasonable.

Therefore, it is ordered, 1. That the suspension as made on the twentieth day of January, 1915, of said P. S. C. Mo. No. 2, first revised copy, as filed with this Commission, be, and the same is hereby, vacated.

Ordered, 2. That this order shall be in full force and effect on and after the first day of June, 1915.

Dated May 24, 1915.

NEBRASKA.

State Railway Commission.

W. M. STEBBINS v. GOTHENBURG TELEPHONE EXCHANGE.

Formal Complaint No. 265.

Decided April 24, 1915.

**Specifications Governing Frequency of Issue, Size, Material, Contents
and Form of Directories Made — Uniformity of Directories by
Adoption by All Companies of said Specifications
Recommended.**

APPEARANCES:

For complaint, *W. M. Stebbins.*

For defendant, *W. C. May.*

ORDER.

TAYLOR, Commissioner:

Defendant operates a telephone system, the headquarters of which are at Gothenburg, Dawson County. Following the practices of telephone companies generally, the management issues a directory, containing the names of all the subscribers on the system, together with rules and regulations governing the service. The expense of printing this directory is defrayed, in whole or in part, by the sale of the advertising space therein.

The complaint is to the effect that the directory is not issued frequently enough to give adequate service to the subscribers, and that it contains such a large quantity of advertising that the listing of subscribers' names is obscured and rendered inconvenient for ready reference. In answer to the complaint, defendant offered to satisfy the same in so far as the frequency of issue was concerned, and to issue a directory at least once each year, as demanded. Defendant also expressed a willingness to mod-

ify its practice with reference to carrying advertising in the directory to meet with any general requirements that might be outlined by the Commission. As there appeared to be but little necessity for a formal hearing, the parties were summoned for a conference on March 30, 1915, at which time the issues were thoroughly canvassed, following which a stipulation was entered into by and between the parties and with the approval of the Commission, the terms of which are as follows:

STIPULATION.

IT IS HEREBY STIPULATED AND AGREED by the parties hereto, that the directory now in force for the Gothenburg Telephone Exchange shall remain in effect until November, 1915.

IT IS FURTHER STIPULATED AND AGREED that upon the expiration of the effective date of the present directory the new directory then to be issued, and all other directories issued thereafter, shall be made to conform to the following specifications:

Size: 6 x 9 inches.

Stock: Cover and paper to be similar in quality to that used in the directory now in effect.

Rules and Regulations: All rules and regulations and general information desired to be published by defendant to be printed in the front and back fly-leaves of the directory.

Advertising: All advertising to be limited to the cover pages of the directory, to additional fly-leaves not occupied by rules, regulations and general information, and to one inch at top and bottom of all other pages; *provided*, that no advertising shall appear at the top of any title page; and *provided further*, that no advertising shall appear in any other position on said pages, and that no pages containing advertising shall be inserted within the section devoted to the alphabetical listing of names.

IT IS FURTHER UNDERSTOOD AND AGREED that all advertisements appearing at the top and bottom of directory pages shall be enclosed within a ruled border, it being understood that the ruled inch space at top and bottom shall run uniform throughout the section of the directory containing the alphabetical listing of names.

The specifications as above outlined are similar to those adopted by many of the companies of the State, particularly the Nebraska Telephone Company and the Lincoln Telephone and Telegraph Company. The primary purpose of a telephone directory is to furnish an alphabetical

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listing of subscribers, arranged in a manner to facilitate ready reference. The list of names should be interfered with or obscured as little as possible by other matter. It is recognized, however, that the directory offers a medium for advertising, and that it affords the companies a source of revenue. Practically all of the companies defray the expense of printing their directories from the revenue thus derived. Without this revenue the expense would have to be charged directly to revenue received from the rates.

While, as stated above, a number of companies issue directories that conform generally with the specifications set forth in the stipulation, a larger number follow no uniform plan. As a consequence, there are many forms of directories and many methods of arranging the subject matter which they contain. For the purpose of securing uniformity, therefore, it was thought best to take advantage of the opportunity afforded by the consideration of this complaint to call the attention of all companies in the State to the matter, with the recommendation from the Commission that, in so far as it is practicable, the specifications as herein set forth be generally adopted. To that end a copy of this order will be served upon the various companies of the State. While the specifications may have to be modified slightly in some instances to meet local conditions, the general provisions can be adopted. If the recommendation of the Commission, as herein expressed, is ignored, it may be necessary to hold a hearing at a later date, at which all companies will be cited to appear.

It is, therefore, ordered, That the Gothenburg Telephone Exchange be, and the same hereby is notified and directed to issue a directory containing the names of its subscribers, and to issue the same at least once each year; *provided, however,* that the directory now in force shall remain in effect until November, 1915.

It is further ordered, That upon the expiration of the effective date of the present directory the new directory then to be issued, and other directories issued thereafter, shall be made to conform to the following specifications:

Size: 6 x 9 inches.

Stock: Cover and paper to be similar in quality to that used in the directory now in effect.

Rules and Regulations: All rules and regulations and general information desired to be published by defendant to be printed in the front and back fly-leaves of the directory.

Advertising: All advertising to be limited to the cover pages of the directory, to additional fly-leaves not occupied by rules, regulations and general information, and to one inch at top and bottom of all other pages; *provided*, that no advertising shall appear at the top of any title page; and *provided further*, that no advertising shall appear in any other position on said pages, and that no pages containing advertising shall be inserted within the section devoted to the alphabetical listing of names; and *provided further*, that all advertisements appearing at the top and bottom of the section reserved for the alphabetical listing of names shall be enclosed within a ruled border, and that said ruled spaces shall appear on each page of the said section, the purpose being to preserve the uniformity of the make-up of said pages.

Made and entered at Lincoln, Nebraska, this twenty-fourth day of April, 1915.*

IN THE MATTER OF THE APPLICATION OF THE LINCOLN TELEPHONE AND TELEGRAPH COMPANY FOR AUTHORITY TO DISCONTINUE ITS TOLL STATION AT SPRAGUE.

Application No. 2403.

Decided May 5, 1915.

Discontinuance of Toll Station Authorized.

EXCERPT FROM THE MINUTES.

Application having been made by the Lincoln Telephone and Telegraph Company for authority to discontinue its toll station at Sprague, for the reason that the receipts

* Under date of May 11, 1915, "the Secretary mailed to all telephone companies which are operating as 'common carriers' within Nebraska, a copy of the Commission's order in regard to Formal Complaint No. 265, *W. M. Stebbins v. Gothenburg Telephone Exchange*, which order pertains to the size, style and contents of telephone directories hereinafter to be issued by Nebraska companies."

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at said station for the last four months have averaged less than \$1.00 per month, and for the further reason that patrons at that point are amply served by party-line service out of Lincoln and also by lines connected with the exchange of the Martel Telephone Company, the desired authority was granted, said toll rates from Sprague, as appearing on the records in this office, to be marked "Cancelled," and with a further notation on said toll rate sheet as follows, "Same as Martel." It was directed that the applicant be notified by letter of the action taken.

WILLIAM J. MARQUIS v. POLK COUNTY TELEPHONE COMPANY.

Formal Complaint No. 208.

*Decided May 8, 1915.***Reduction of Business Rate Refused.**

Complaint alleged that the rate of \$2.50 per month for individual business service was excessive; that it was discriminatory in comparison with the rates charged other classes of patrons; that the service was poor; that the Commission was without power to authorize an increase in rates for service in the city of Stromsburg, as the ordinance granting the franchise under which the company was operating in that city fixed the rate for individual business telephones at \$1.50 per month.

Valuation of Property Made—Allowance of 5 Per Cent. of Capital Obligations for Working Capital Made.

The property of the defendant, construction of which had been begun by the Golden Rod Telephone Company, had been purchased by the organizers of the Polk County Telephone Company for \$13,000, although the investment of the Golden Rod company had been in excess of that amount. Subsequent charges brought the book value up to \$76,018.08. The outstanding stock was \$74,625. All of this had been issued for cash, except \$1,000 which was issued to the incorporators in payment for services rendered in the promotion of the company. As a considerable portion of the time of these men had been devoted to the promotion, construction and operation of the plant, their services were considered as fully worth the amount allowed. \$4,683.18 in stock dividends had been issued, but as the money which it represented had been actually used in the construction of the plant it was considered proper to recognize it as a part of the investment. \$1,500 of borrowed money, which must later be

liquidated from the sale of stock, had also been invested. The sum of these items represented the actual investment, but included nothing for working capital. Accordingly, an allowance of 5 per cent. of the capital obligations, or \$3,800, was made for this purpose.

Held: That the measure of sacrifice made by the stockholders to produce the present property was \$79,925;

That this amount compares favorably with the physical valuation made by the Commission's engineer on the cost of reproduction less depreciation theory, and it also compares favorably with the cost of plant as shown by the construction account.

Refusal by Commission to Adopt any Formula for Determining Value.

Although urged by the complainant, the Commission refused to adopt any rigid formula for the valuation of public utilities.

Held: That value is and always must be a matter of human judgment. It is composed of so many intangible factors that it is impossible of mathematical measurement. Both the original cost and the cost of reproduction theories are helpful, but each has its limitations;

That the ascertaining of fair value as a basis for fixing rates is at once a social, economic, legal and political problem that cannot be determined according to any set rule or formula. The regulating body should ascertain all the facts and from these deduce conclusions that promise justice to all interests.

Operating Revenues and Expenses under Present and Proposed Rates Considered — 8 Per Cent. Allowance for Maintenance and Reserve for Depreciation Held Normal — 7 Per Cent. Allowance for Rate of Return Held Reasonable — Sacrifice by Stockholders Necessary Where Excessive Dividends Have Been Declared at the Expense of Sufficient Allowance for Reserve for Depreciation.

The operating expenses showed that the allowance for maintenance and reserve for depreciation had not been sufficient to maintain the plant at the proper standard of service efficiency. This failure to keep the plant in proper condition was not due to lack of revenue, but to the fact that dividends greater than were warranted had been paid. The average rate of dividends had been 9.52 per cent. As the necessary allowance for reserve for depreciation had not been made in the past, a larger allowance than would ordinarily be considered normal must be made in the future in order to restore the plant to a proper operating condition.

Held: That an allowance of 10 per cent. should be set aside annually for maintenance and reserve for depreciation instead of the normal allowance of 8 to 9 per cent.;

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That dividends should be reduced, so that in effect the stockholders would return to the plant money received in excess of a reasonable return on the investment;

That as the old rates would leave after paying operating expenses, only 13½ per cent. for maintenance and reserve for depreciation, and return on investment, and as 8 per cent. was a normal allowance for maintenance and reserve for depreciation, the remainder, 5½ per cent., would not yield a sufficient return;

That as the new rates would leave, after paying operating expenses, only 15½ per cent. for maintenance and reserve for depreciation and rate of return, and considering 8 per cent. as a reasonable allowance for reserve for depreciation and 7 per cent. as a reasonable rate of return, the new rates should be approved.

Reclassification of Rates Held Inadvisable.

Held: That in view of the fact that any classification of subscribers must be more or less arbitrary and that discriminations are likely to result, no reclassification of charges should be made until some system can be devised, basing the charges upon a measured service, that is more equitable and practical than the present system.

Commission has Power to Alter Rates Fixed by Franchise.

Held: That a rate fixed by a city ordinance is not a contract that can not be annulled or modified by the State itself, except where the municipality has been empowered in specific terms to make such a contract.

That the Commission may alter rates fixed by the franchise granted by the city of Stromsburg.

Dissenting Opinion of Commissioner Hall.

Commissioner Hall filed a dissenting opinion holding that as the public had paid rates sufficient to pay operating expenses, to keep the plant at 100 per cent. efficiency and to pay a return of 7 per cent. on the investment, it had done its whole duty to the company.

APPEARANCES:

For complainant, *V. E. Wilson.*

For defendant, *King and Bittner and Mills and Beebe.*

OPINION AND ORDER.

TAYLOR, Commissioner:

Having purchased the property of the Lincoln Telephone and Telegraph Company in Polk County, with the object of consolidating the same with its system in that territory, defendant made application to the Commission on Decem-

ber 12, 1912, for authority to increase its rate for individual business telephones from \$1.50 to \$2.50 per month. The application was accompanied by a petition, signed by upwards of fifty of the business men of Osceola and Stromsburg, assenting to the increase. On December 13, 1912, the Commission issued an order authorizing the increase and fixing January 1, 1913, as the date when the new rate was to become effective. At the time the application was made the company expected to complete the consolidation of the plants by January 1, 1913, but for some reason the consolidation was delayed and it was not until May 1, 1913, that the new rate was actually charged.

The complaint in this case was filed on July 3, 1913, and in substance it is that the rate of \$2.50 for individual business service is excessive, that it is discriminatory in comparison with the rates charged other classes of patrons, that the service is faulty and inefficient and that the Commission is without jurisdiction to increase defendant's rates in so far as they apply to the city of Stromsburg, for the reason that the ordinance granting the franchise under which the company operates in that city fixes the rates to be charged and limits the charge for individual business telephones to \$1.50 per month. A hearing for the taking of evidence was held by the Commission in Stromsburg on January 13 and 14, 1914, and other hearings for arguments have been held from time to time during the progress of the investigation. In addition to the evidence adduced at the hearings much additional information was secured through exhaustive investigations made by the accountants and engineers of the Commission.

The question of the jurisdiction of the Commission as it is affected by the franchise granted defendant by the city of Stromsburg was disposed of on December 23, 1913, when the Commission overruled a demurrer filed by complainant to the answer of defendant. No reasons were offered by the Commission at the time the motion was overruled, and in view of the fact that the same question is discussed in the

opinion in Application No. 1799,* it does not appear necessary to repeat what was said then or amplify the reasons therein presented. It is interesting to note in this connection, however, that since the preparation of the opinion in that case the Supreme Court of the United States has again spoken (*Wyandotte County Gas Company v. State of Kansas, ex rel. John Marshall, Attorney for the Public Utilities Commission of the State of Kansas*, 231 U. S. 625), sustaining the conclusion that a rate fixed by city ordinance is not a contract that cannot be annulled or modified by the State itself, except where the municipality has been empowered in specific terms to make such a contract.

The real issue to be determined, therefore, is as to whether the revenue earned by the company in the past has been sufficient to pay the operating expenses, maintain the property and provide a reasonable return upon the money invested, and if not, to determine whether the increase granted is more than is required for the purpose. The property of defendant consists of exchanges at Osceola and Stromsburg with farm lines covering practically all of Polk county. While the company has a number of subscribers in the town of Polk and there are several farm lines radiating from that point, it does not own a switchboard there, but pays the Bradshaw Telephone Company for performing switching service. There are at the present time 1,327 subscribers on the system.

VALUATION.

In view of the fact that there is no serious disagreement between complainant and the Commission's accountant, Mr. Powell, with reference to the actual amount of money that has been invested in this property, it does not seem necessary to enter into an exhaustive analysis of the history of the company. As in the case of the majority of small telephone companies, a double entry set of books has

* *In the Matter of the Application of the Lincoln Telephone and Telegraph Company for Authority to Consolidate Its Exchanges in Beatrice and to Revise Its Schedule of Rates.* Commission Leaflet No. 22, p. 898.

not been kept in a manner to show the exact amount of money that has been expended for each of the various accounts of construction, operation, maintenance and replacement, but the records do show how much money has been received and how much expended. They are likewise clear as the amount of stock outstanding and the manner in which the proceeds from its sale has been expended. It has been possible, therefore, to arrive at a very close approximation of the amount of money that has actually been required to produce the property that is now devoted to the public use. The construction of the plant was first started by the Golden Rod Telephone Company in 1903, but the portion that had been completed by May, 1904, was purchased by Messrs. E. E. Stanton, C. E. Mickey, H. D. Skelton and A. F. Nuquist, who, on June 28, 1904, organized the Polk County Telephone Company. While the bill of sale conveying the property from the Golden Rod Telephone Company to the four gentlemen above named states that the consideration was \$16,000, it is clear that that was not the price paid. While there is some controversy as to what the actual amount was, there can be but little doubt that the figure of \$13,000 set up on the books as the capital outstanding at the time the new company was incorporated represented the actual investment in the property at that time. The exact number of subscribers' stations in service at the time of the purchase is not revealed by the books, but on June 1, 1904, there were 276. On the basis of that number the value per station would have been a trifle over \$47.00, which is under the average for plants of that character. As a matter of fact, the record indicates that the investment of the Golden Rod company may have been considerably more than \$13,000, and that the purchasers secured the property at a very reasonable figure. The amount of stock outstanding on June 30, 1913, the date to which this investigation has been brought, was \$74,625. According to the report of Mr. Powell, which is substantiated by the testimony, all of this represents actual cash investment, with the exception of \$1,000 which was issued

to the four original incorporators in payment for services rendered in the promotion of the company. As no salaries were paid during the first year by the company, and as a considerable portion of the time of the four men to whom the stock was issued was devoted to the promotion, construction and operation of the plant during that period, it is reasonable to assume that the services thus performed were fully worth the amount allowed. Stock to the amount of \$4,683.18 was issued in lieu of cash dividends during the period from October, 1904, to June, 1905, but the money which it represents was actually used in the construction of the plant, so that it is proper to recognize it as a part of the investment, provided due allowance is made for it when consideration is given to the amount of dividends received by the stockholders during the life of the company. The question of these dividends will be considered later. To the outstanding stock of \$74,625 should be added \$1,500 of borrowed money, which obligation was incurred at the time of the purchase of the property of the Lincoln Telephone and Telegraph Company, and which must, of course, later be liquidated from the proceeds of the sale of stock. The sum of these items, \$76,125, includes nothing for working capital. The Commission has previously found 5 per cent. of the capital obligations to be a reasonable allowance for this purpose and does not regard that amount as excessive in this case. Maintenance and reconstruction work in a plant of the size require the keeping on hand of from \$1,000 to \$1,500 worth of material, while the bills receivable and the current expenditures incident to the conduct of the business demand the carrying of a fund of ready cash. Adopting round figures, the allowance then for this purpose is \$3,800 which, added to the capital obligation, gives the figure of \$79,925. This, the Commission believes to be the measure of the sacrifice made by the stockholders to produce the present property now in use. That the conclusion embodied in this figure is reasonable and fair to all parties at interest is manifest. It is supported in every particular by the books and other records

and by the testimony. It corresponds closely to the amount arrived at by adding the original \$13,000 of capital stock and the entries in the "Construction" account, which is \$76,018.08. It results in an average cost per subscriber's station of less than \$60.00, whereas the average cost per station for the Nebraska Telephone Company's entire system is \$77.60, and the like unit cost of the York county plant of the Lincoln Telephone and Telegraph Company, similar to the plant under consideration, is \$78.80, the figures in all three instances being arrived at in the same manner and on the same basis. It compares favorably with the physical valuation made by the Commission's engineer, which showed a reproduction value of \$106,036.38 and a present value of \$74,213.76. It is less even than attorney for complainant would allow in that it does not include an allowance of \$9,374, which the Commission's engineer states represents the increase in the price of materials and labor during the life of the plant, and which if added would bring the total to \$89,299.

At this juncture it is proper to consider a demand made by complainant's counsel in his brief to the effect that it is the duty of this Commission to adopt a formula for the valuation of public utilities. He considers such a formula possible and defines it in the following terms: "The cost of construction of the plant in use, as shown by the company's books, eliminating reckless and extravagant expenditures, plus or minus any changes in price of material and labor since the time of construction, as shown by competent evidence," or, expressed in other words, "The original cost of construction, plus the increased cost of material and labor since the time of construction." While recognizing the grave importance attached to the problem of ascertaining a just and fair value of the utilities over which it has jurisdiction, this Commission respectfully declines to prescribe or indorse any rigid formula for its solution. As a matter of fact, it regards the question as of such vital importance that it cannot but view with apprehension any effort to restrict its solution to rules or formula that would

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forbid the free play of judgment, experience and the influence of the circumstances of the case in hand.

Value is and always must be a matter of human judgment. It is composed of so many intangible factors that it is impossible of mathematical measurement. Two men, working to the same purpose, employing the same formula, using the same information and given the same property, will almost invariably arrive at different conclusions. No better illustration of this inability of men to see alike is needed than that furnished by Hon. C. F. Staples, member of the Minnesota Railroad and Warehouse Commission, in a booklet entitled, "*The Unreliability of Unsupported Opinion Evidence in Determining Land Values in Railroad Appraisals*," in which he cites a case showing a variation of several hundred thousand dollars in the valuation of one tract of land. Ten men submitted valuations of the tract in the first test and the figures ranged from \$2,360 to \$143,624. Fourteen men submitted figures on the same tract in a second test and the estimates ranged from \$2,003 to \$287,043. All were experienced real estate dealers and brokers. Because of the difficulties surrounding the application of any fixed method, therefore, all theories are subject to criticism, the one presented by counsel in this case being no exception.

In the first place, "original cost" is impossible of ascertainment in a large number of cases because of a lack of historical information. In the past—and this condition applies particularly to telephone companies—bookkeeping has been a mere incident to the operation of the utility, the records covering only the entries absolutely necessary to the collection and expenditure of the earnings. It is only within the past few years that scientific accounting systems, formulated by regulating bodies, have been established whereby it is possible to determine definitely just what disposition is made of the money flowing into, and out of, the treasury of the company. Operation, maintenance, new construction and depreciation accounts have been so intermingled and confused that they do not reflect actual

facts. In some instances important records have been lost, or in the case of the sale or transfer of the utility, they have been destroyed.

Particularly pertinent in this connection is the experience of the Division of Valuation of the Interstate Commerce Commission with reference to the finding of "original cost to date" of the railroads. In an address delivered before the National Association of Railway Commissioners at Washington on November 18, 1914, Hon. C. A. Prouty, director of the Division of Valuation, emphasized the difficulties attending the ascertainment of "original cost to date," and declared his conviction that "the work we have done upon original cost to date in the accounting department is a practical nullity." The discussion is entirely too long for incorporation in this opinion, but the following excerpts can be said to fairly summarize it:

"The statute requires us to show original cost to date with respect to each item of property. None of us knew exactly what that meant, but it seemed at the outset that we should select certain railroads and do as best we could that which the act required. We have selected a single road in each engineering district for valuation, and our accountants took the same road for accounting purposes. Well, we had not proceeded a great while before I made up my mind that we were squandering a great deal of money, and our accountants were instructed to discontinue a certain part of this original-cost-to-date work in every place but two. The Texas Midland road, 112 miles long, was one of the roads which had been selected. The New Orleans, Texas and Mexico road, 175 miles long, was another road which had been selected in the central district and we concluded, in the case of those two little roads, to carry the thing through to a conclusion and see exactly where we landed, and exactly what it cost us. Until very recently I had never known what the definition of the California Commission of 'original cost to date' was, but I had, rather against my own first impression, reached a conclusion exactly in accordance with that definition as I understand it. If we could go back to the beginning and rewrite the books of account of a railroad company according to the rules of the Interstate Commerce Commission, the property account — the investment account — as shown by that operation, would be, I think, 'original cost to date,' and that was precisely what we attempted to do in the case of these two railroads. We went back to the beginning, and we endeavored to rewrite the accounts of that company and to show

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what a correct investment account would be to date, to take out of that account everything which had improperly gone into it, and put into that account everything which had been improperly left out. Now, you see that that is a tremendous undertaking. It is a tremendous undertaking with respect to a little railroad like the Texas Midland. You have got to handle every item. You have got to examine it, analyze it and assign it. That was done, with the conclusion that when your investment account had been rewritten it was good for nothing.

In the first place it is absolutely impossible today, as the books of account of the railroads in this country have been kept, to correct errors which may have been made in the original distribution of those items. Take a voucher for a pay roll and a voucher for supplies. Here is a bill for timber. You cannot pass upon the question whether it was used for an addition and a betterment of that property, or whether it was used for a renewal which should properly be charged to operation. But worse than that, there is no way in which you can tell what retirement has been made, and what retirement should therefore be taken out of that investment account. So that we felt that the investment account when rewritten was not much better than it was before we attacked it, and it is my own feeling that if you were to treat the books of every carrier in the country in that way, while you might detect and would detect many instances of mistakes, the general result would add very little to the knowledge which you now have, and it might be a source of misinformation rather than of more accurate information.

It is the duty of this Commission under this act to show original cost to date. Now if you can show it from the books of the company, show it in that way. If you cannot show it from the books of the company, show what you can from the books and estimate the balance. * * * My own conviction is that all this work involved on the Texas Midland as to the original cost to date is absolutely thrown away. * * * The expenditure in connection with doing that 'cost to date' work has been something frightful. We have only worked this out on two short lines. The Texas Midland is a road 112 miles long. Its books began 21 years ago. It cost \$133 a mile to do the accounting work on the Texas Midland. The New Orleans, Texas and Mexico road is 175 miles long. Its books go back only ten years. It cost us \$90.00 a mile to do the work on that road. If you were to apply these same figures to all the railroads in the United States, it would cost somewhere from \$50,000,000 to \$100,000,000 to do this accounting work."

The obstacles confronting the national valuation body are common to every piece of valuation work. Facts, of course, should be used where they are available and they are to be preferred above mere theory or speculation. In

the instant case enough facts are ascertainable to make it possible to reach a reasonably accurate approximation of the investment in the property, and they are used in preference to the physical valuation for that reason.

A rigid adherence to the "original cost" or "cost of construction" theory involves the recognition of expenditures that might otherwise be disallowed. In building the plant of a public utility it is sometimes impossible to foresee all the conditions that may have to be met, and expenditures are incurred that subsequently form the basis for serious controversy when considered in connection with the valuation of the property.

Mr. Prouty, in an address delivered at Washington before the Chamber of Commerce of the United States of America on February 12, 1914, offers an illustration in point, which is as follows:

"The first railroad the Commission is proceeding to survey in what is known as the Pacific District is the San Pedro, Los Angeles and Salt Lake, extending from San Pedro, California, to Salt Lake City, Utah, some eight hundred miles. Most of this road has been built in comparatively recent times, and the circumstances and cost of construction are fairly well known.

The course of the road is for the most part through an arid desert. A certain section of it, when built, was located where no man thought it ever could be disturbed by floods, yet shortly after it was opened for operation the floods came and carried out this portion. It was at once reconstructed upon a new location supposed to be beyond all possible danger from a recurrence of the previous disaster, nevertheless the waters again came and washed away this section; whereupon it was rebuilt upon a third location, beyond all possible reach of future trouble from this source.

Considering the nature of the road and the people who were interested in its construction, it seems possible that due caution was exercised in the original location; that is, that a reasonably prudent man building this railroad as those men did, to be operated by them as a railroad, would have located it as it was located. It is undoubtedly true that the second location was made with great care, and was believed to be beyond possible danger. It has cost a large sum more to rebuild this road than it would have originally cost to construct it where it is today. Now, in determining the value of this property what if any allowance is to be made for this experimental outlay? If the government itself had constructed this railroad it probably would have had the same experience and would have expended the same amount of money which the owners actually did.

This illustration puts the question in a very striking form, but the same idea enters more or less into the valuation of most of the railroads of this country. There has of necessity been a certain amount of experiment before hitting on the right and proper thing. Does this development expense constitute an element of value which may be recognized today, or must the owners of these public utilities stand the loss of their mistakes in the same way that the owner of a private enterprise would? Vast sums of money are involved in the answer to that very simple question."

An application of the cost of construction formula to the case cited by Mr. Prouty would necessarily involve the recognition of the added expenditures caused by the destruction of the property. It might be argued that a certain amount of extra cost should be amortized, but to do that would involve the exercise of judgment as to how much, and the result would necessarily have to be an estimate. Other cases might be cited where the sudden and unexpected development of a utility has rendered obsolete and useless certain portions of the property, the expenditures incurred being not properly chargeable to depreciation. The formula under discussion would include such expenditures in the final value, or, if it was modified so as to readjust them, the valuator would again find it necessary to make an estimate of what should, or should not, be allowed. The formula also disregards appreciation or depreciation in the property, account of which must be taken in practically every utility owning real estate. Taking the case of the Northern Pacific running through Spokane, cited by Director Prouty, we find the right-of-way of the railroad today to be worth at least \$5,000,000. The original cost to the railroad was nothing. What value should be placed on that land today? If, on the theory of the formula, no value is allowed, what should be done in the case of a utility that purchased real estate that has since depreciated? In *Superior Commercial Club v. Superior Water, Light and Power Company*, decided by the Wisconsin Railroad Commission, land purchased at a cost of \$64,850 was appraised at \$34,850. The company demanded recognition of the original cost, but the Commission held that the land had depreciated in value and fixed the value as of the date the appraisal was made. In

Application No. 2217* this Commission found a property, the original cost of which has been between \$400,000 and \$500,000, as shown by the books. Applicant asked for a value on that basis. A physical valuation of the plant now in use fixed the reproduction new at \$312,407.44 and the present value at \$260,095.44. The original investment produced a property entirely unsuited to the use to which the utility is now being put, and it was necessary, for the purposes of the case, to theoretically reconstruct the plant to meet present conditions. Indeed, in the instant case an adherence to original cost might produce a value larger than is now being allowed, if we accept the evidence that the plant purchased of the Golden Rod company cost more than was paid for it. Assuming, however, that the price paid was much more than the property actually cost, it would then require an investigation to determine whether the payment of the premium was justified, and this presents another objection to the formula in that it would recognize investments made for "good will" or "going concern value," provided the property had changed hands and money had actually been expended for such factors.

It hardly seems necessary to pursue the discussion further, as we feel we have pointed out enough serious objections to the formula proposed by counsel to justify a refusal to accept it as the one and only basis for ascertaining "fair value." We do not desire to be understood as having discarded it entirely. On the contrary, we regard it as of vital importance in many cases, as its selection in the present instance shows, but to adopt it to the exclusion of all other methods we believe would be a grave mistake that would lead to serious injustice. The reproduction new theory of ascertaining value is, perhaps, equally faulty and its inflexible application to all kinds of conditions has undoubtedly led to some unjust results. As in the case of the cost of con-

* *In the Matter of the Application of Kearney Water and Electric Power Company for Authority to Issue and Sell its Second Mortgage Bonds in the Amount of \$35,000.*

struction theory, it must be used with judgment and discretion, being modified to fit the circumstances and the requirements of each case. It is highly valuable, as before stated, when historical data is unobtainable, and it serves an important purpose in many cases in complementing and corroborating data already secured. Both methods, as a matter of fact, are essential to a solution of the problem, and if there are any other methods that aid in its solution they should be given consideration. So important is the question of ascertaining "fair value" as a basis for fixing rates that no regulating body should shut the door against any plan or formula that promises assistance. It is at once a social, economic, legal and political problem that will not be determined according to any set rule or formula. It is for the regulating body first of all to ascertain all the facts and from them deduce conclusions that promise justice to all interests.

OPERATION.

Aside from the amount paid in dividends during the life of the company there is but little controversy concerning the expenditures for direct operation and maintenance, complainant conceding that the business has been economically managed. There have been no excessive salaries paid to officers and the expenditures compare favorably with those of other companies. Accountant Powell has prepared a statement of earnings and expenses covering the period from May 1, 1904, to June 30, 1913, which presents at a glance the operating history of the plant and which is herewith submitted:

**STATEMENT OF EARNINGS AND EXPENSES OF THE POLK
COUNTY TELEPHONE COMPANY COVERING THE PERIOD
FROM MAY 1, 1904 TO JUNE 30, 1913.**

EARNINGS.

Stromsburg	\$57,809 56
Osceola	58,183 92
Polk	9,441 75

TOTAL	\$125,435 23
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*Maintenance.***EXPENSES.**

Material and supplies.....	\$12,459 63
Linemen	17,124 99
Livery and drayage.....	6,113 39

TOTAL	\$35,698 01
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Operating.

Operator's salaries	\$20,329 76
Polk, switching	1,648 53
Water, heat, light.....	822 36
Rent	1,626 20

TOTAL	24,426 85
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General.

Officers salaries	\$6,803 47
Printing, postage, advertising....	1,210 84
Traveling expenses	34 62
Insurance	180 57
Interest	1,980 25
Furniture and fixtures.....	65 00

TOTAL	10,274 75
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GRAND TOTAL EXPENSE	70,399 61
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INCOME FROM OPERATION	\$55,035 62
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DEDUCTION FROM INCOME.

Payments to Traffic Association on toll business.....	\$2,038 18
Taxes	1,497 36
Commissions on sales of stock.....	568 00
Dividends paid in cash.....	44,864 26
Betterments and additions, not capitalized.....	595 66
Betterments and additions, capitalized.....	4,683 18
Depreciation reserve	200 00

TOTAL	\$54,446 64
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This shows an average annual maintenance of 6.6 per cent. based on capital as issued, and less than .3 per cent. of the outstanding capital stock as a depreciation reserve, which is evidence that the allowances for those two purposes have not been sufficient to maintain the property at the original investment nor to the proper standard of service efficiency. This conclusion is supported by the report of the Commission's engineer, by a personal inspection of a portion of the plant by two of the members of the Commission and by testimony of patrons with respect to the kind of service rendered. The physical condition of the property is below standard requirements and considerable reconstruction is necessary. This condition, however, is not due entirely to the lack of revenue, as consideration must be given to the amount of money distributed to the stockholders in the way of dividends. It is apparent that a greater amount has been taken from the earnings for this purpose than was warranted by the requirements for a reasonable return. The practice of the company has been to close the accounts every three months, at which time the board of directors met and declared such dividend as they thought proper. From October, 1904, to March, 1907, the rate of return exceeded 2 per cent. per quarter, running from 3.3 per cent. to as high as 7 per cent. Following that date, however, the rate never exceeded 2 per cent. The average annual rate for the entire period is 9.52 per cent. and as that figure differs from the percentage computed at the time of the hearing and later used by counsel for complainant in his brief, it is necessary to explain how it is arrived at. The figure of 10.8 per cent., as computed by accountant Powell while on the witness stand in response to a suggestion from counsel and as later used by counsel as a basis for certain conclusions, is arrived at by averaging the percentages for the thirty-six quarterly periods involved. This method does not reflect the actual facts, however, for the reason that the capital stock was constantly changing, being different for twenty-three out of the thirty-six quarters. Applying the average annual percentage of 10.8 to the capi-

tal stock at the end of each year results in a figure of \$63,536.40, which should represent, if the percentage was correct, the dividends that had been paid during the life of the company, whereas reference to the above summary shows that the actual return to the stockholders was \$50,143.10. In short, an average rate of return can only be determined by first securing an average of the stock outstanding at the end of each period for which the rate was applied.

While, as stated, the dividends paid probably exceed a reasonable allowance for that purpose it is difficult, if not practically impossible, to go back into the history of this company to ascertain what a reasonable rate of return should have been, and for that reason no attempt will be made to fix a specific allowance. At the time of the organization of this company, conditions in the telephone field were radically different from what they are today. The industry was just on the threshold of its greatest development. In 1904 the Nebraska Telephone Company had an investment in the State of approximately \$2,500,000 which covered 27,641 subscribers' stations, 14,000 of which were in Omaha and Lincoln. The figures are not available but it would be a conservative estimate to say that there were not 5,000 subscribers' stations operated by independent companies in Nebraska at that time. By 1911 the Nebraska Telephone Company's investment had been increased to \$7,311,000 and its number of subscribers' stations to 68,176, while the investment of the independent companies had jumped to \$8,078,000 and the number of subscribers' stations to 78,774. In other words, over \$12,000,000 of money was invested in the telephone business in Nebraska in a little less than seven years. This demand for capital came from an as yet untried and undeveloped industry, the hazards of which were practically unknown and the very management and operation of which was yet to be perfected. Competition was so keen that it was in reality a warfare, and many companies subsequently failed. It is apparent, therefore, that the conditions surrounding investments in

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the industry at that time were materially different than they are at present, and that they called for a larger return than today when the business has been established on a stable and permanent footing, competition practically eliminated and the apparatus standardized so that allowances for obsolescence are reduced.

Making the necessary allowance for such conditions, however, we are of the opinion that the dividends paid by defendant were in excess of what would have been regarded as reasonable at the time, and it is apparent from the present condition of the property that the earnings thus diverted to the stockholders were withdrawn to the detriment of the plant. The necessary allowance for depreciation was not made by the company, partly because of these large dividends, and it will be necessary at this time to require a larger allowance for that purpose than would ordinarily be considered normal in order to bring the plant back to a satisfactory service condition. The Commission has found an allowance of from 8 per cent. to 9 per cent. of the cost of the property requisite for the purpose of maintenance and depreciation, and if this plant were in a normal condition the former figure would perhaps be reasonable, but because the property has not been properly maintained we are of the opinion and so find that not less than 10 per cent. of the cost of the property should be set aside annually for these purposes. This will necessarily reduce the dividends, and, in effect, amounts to a requirement upon the stockholders to restore to the plant money received by them in excess of what might have been a reasonable earning on their investment. Nor is it the purpose of this order to permit the defendant to levy additional charges upon its patrons at this time for the purpose of restoring the plant to its normal condition. Owing to increased cost of operation the net income at present is considerably less than it was three years ago, consequently even if the property had been properly maintained the revenue from the old rates would not now be sufficient. As will be shown later, the

return to the stockholders on the old rates under present conditions, allowing the normal amount of the maintenance and depreciation, would be but $5\frac{1}{2}$ per cent. In other words, had the stockholders received an average of $7\frac{1}{2}$ per cent. in dividends up to 1912, after making the necessary expenditure for maintenance and depreciation, they would today, because of the increased cost of operation, find their dividends cut to $5\frac{1}{2}$ per cent. It is obvious, therefore, that additional revenue would be necessary if the conditions were normal, and it is equally obvious that the stockholders, and not the patrons, are the ones of whom the sacrifice is required. If at a later time it can be shown that the property has been restored to a first-class service condition through the sacrifice thus imposed on the present stockholders, the allowance herein provided can be reduced to the normal.

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STATEMENT OF EARNINGS AND EXPENSES OF THE POLK
COUNTY TELEPHONE COMPANY FOR THE YEAR JUNE 30,
1913, TO JUNE 30, 1914.

EARNINGS.

City rentals	\$10,359 00	
Farm	8,205 50	
Toll (net)	749 19	
Switching	810 00	
Messenger and miscellaneous.....	252 09	
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TOTAL		\$20,375 78

EXPENSES.

Maintenance.

10 per cent. on property invest- ment of \$76,125.....	\$7,612 50	
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TOTAL		\$7,612 50

Operating.

Operating and switching.....	\$4,850 05	
Printing, postage and supplies..	296 77	
Light, heat and water.....	217 12	
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TOTAL		5,364 54

General.

Salaries of officers.....	\$1,612 50	
Rent	327 60	
Insurance	12 00	
Traveling expense	49 78	
Legal expenses	169 50	
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TOTAL		2,171 38

TOTAL EXPENSE		15,148 42
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EARNINGS FROM OPERATION.....		\$5,227 36
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Deductions.

Taxes paid	\$369 42	
Uncollectible accounts	407 50	
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TOTAL		776 92

NET REMAINING FOR DIVIDENDS.....		\$4,450 44
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On the basis of the property valuation as we have found it and allowing 10 per cent. for maintenance and depreciation, the above statements show the results of operation of applicant's plant for the fiscal year ending June 30, 1914. The earnings include the increased revenue derived from the added rate on business telephones, and represent the gross receipts from all sources for the year, as shown by the books of the company. The net remaining for dividends amounts to $5\frac{1}{2}$ per cent. on the property investment. When the time arrives that the property is restored to the proper service conditions and the allowance for maintenance and depreciation can be decreased from 10 per cent. to the normal of 8 per cent. the amount then left for dividends will be approximately $7\frac{1}{2}$ per cent., provided existing conditions continue to that time.

There are 127 business telephones to which the rate complained of applies. As the increase amounts to \$1.00 per month per subscriber station the annual earnings involved would be \$1,524. If the rates were restored to the former basis, therefore, the gross earnings for the year would be reduced by that amount to \$18,851.78. Subtracting from this the expenses for operation, maintenance and depreciation and necessary deductions from income, there would remain for dividends, allowing 10 per cent. for maintenance and depreciation, but \$2,926.44 or 3.6 per cent. Allowing 8 per cent. for maintenance and depreciation there would remain for dividends \$4,448.94 or approximately $5\frac{1}{2}$ per cent. It can hardly be seriously argued that a rate of return of only $5\frac{1}{2}$ per cent. is sufficient for an investment in the telephone business at this time. While, as we have set forth in the foregoing, conditions are much more favorable for the industry than at any time in its history, it is still in a state of development and investors will demand a larger return than could be secured from utilities more firmly established. In the opinion of the Commission the interest rate on farm mortgages is no fair measure of a reasonable return for telephone securities, although such a comparison is urged by counsel for complainant.

There are elements of risk in the telephone business, such as potential competition, business depression, possible public ownership, radical changes in equipment for which no adequate provision can be made, the possible complete destruction of the property by storm, etc., which do not pertain to farm mortgages, and which make the value of the two investments altogether different. In previous cases the Commission has found 7 per cent. to be a reasonable return, and as the earnings under the present rates will produce a return of but slightly more than that, they cannot be held to be excessive. The expenses of the company have been steadily increasing for the past three years, being over \$3,500 greater in 1914 than in 1912. While it is likely that they have reached a fairly constant level, the changes in the plant and the improved service that will follow may necessitate still further expenditures, in which event the surplus over the allowance of 7 per cent. would be consumed.

In all of the foregoing calculations there has been no separation of toll, from exchange, property, earnings or expense. It is probable that were such separation to be made the net earnings of the exchange would be slightly increased. The net receipts from toll for 1914 were but \$749.19, which in all probability did not defray the expense of handling the toll business. Before the purchase of the Lincoln Telephone and Telegraph Company's property, applicant realized considerably more from the operation of its toll lines than it does under present conditions. Consequently in the past the gross earnings were larger for that reason and the exchange was the beneficiary. As the amount involved in either instance was not large, however, and would not affect the issues in this case, it has not been considered necessary to attempt a separation.

With reference to that portion of the complaint alleging discrimination as between the rates charged to business men and the rates charged to farmers, the Commission is of the opinion that no re-classification of charges is advisable at this time. The schedule corresponds closely to the

schedules in effect all over the State. It is recognized that any classification of subscribers must be more or less arbitrary and that discriminations are thus likely to result, but until some system of basing the charges upon a measured service can be devised that is more equitable and practicable than any now in use, arbitrary classifications will necessarily have to be made. The classification now in effect has the approval of long usage and experience. Under it there has been a remarkable development of the industry, indicating that it approximates equity, at least. Therefore, without undertaking to go into the refinements of the relative value, or the cost of the service to the various classes of subscribers, the Commission will hold that the schedule of rates now in effect on applicant's exchange are not unduly discriminatory and that no readjustment as between patrons is necessary.

ORDER.

It is, therefore, ordered, That the complaint herein be, and the same hereby is, dismissed.

It is further ordered, That defendant, the Polk County Telephone Company be, and the same hereby is, until the further order of this Commission, required to set aside out of its earnings a sum of money equal to 10 per cent. of its capital liabilities, the proceeds of which shall be used for current maintenance and repairs, said requirement to be of full force and effect from and after July 1, 1914.

Made and entered at Lincoln, Nebraska, this eighth day of May, 1915.

DISSENTING OPINION.

HALL, *Commissioner*:

It is generally conceded that rate making bodies, in rate controversies, shall make rates to raise funds sufficient to pay operating expenses, maintenance, depreciation, taxes, losses and damages of the utility, and then a fund sufficient to pay dividends at a reasonable rate upon same amount of money.

The above statement is an easy one to make and the principles therein contained are so fundamental that there are few who take issue with them. However, a brief consideration of the language will show that it imposes upon the Commission a duty, which is in its essential nature plain and simple, but very difficult and complex in its practical execution.

The fund for operating expenses should be sufficient to employ officers, business managers and all employes in the actual operation of the business, of sufficient ability to deliver the best service to the public.

The fund for maintenance of the properties should be sufficient to keep the property of the utility intact and up to the standard of 100 per cent. service efficiency, and no more.

The amount of taxes are usually easily determined, and without question is properly chargeable to operation.

When we come to discuss losses we are confronted with complexing questions that are not easily determined. We agree that the losses that occur under prudent business management are properly chargeable to general operating expense; but who is to say that losses are to be charged to operating expense and thereby passed on to the rate paying public, the company, the public or the Commission?

The question of damages is still more confusing and much more difficult to determine. I think no one would question the charging to operating expense, damages accruing to the property of the utility by storms and unforeseen causes that are beyond human possibility to prevent. But it may be a serious question as to charging to operating expenses, personal injury damages, determined by judicial proceedings, which are the result of negligence on the part of the company, and thereby passing the burden on to the public. Again, who is to settle such questions? If, under the constitution, the Commission has jurisdiction of rates, service, and general control of the applicant herein, and if the burden of proof, under the statutes, is on the applicant to show the necessity of additional

revenue, it is clearly the duty of the Commission to pass upon the necessity of all funds for general operating expense.

A careful study has been made of the affairs of the applicant herein for a period of nine years, and I am not inclined to criticize the results or the methods used.

There is practically no dispute as to the question of capitalization or the amount of money spent in the operation. But whatever the total cost of operation, including maintenance and depreciation, taxes, losses and damages, has been, the public has paid rates sufficient to take care of such charges. The amount of money spent for the period for maintenance and depreciation averaged 6.6 per cent. This is 1.4 per cent. below the normal, the result of which was a gradual depreciation of the property, which always means a depreciation in service. But while the company was not keeping its property up to the proper standard of service efficiency, it paid itself on an average of 9.52 per cent. dividends.

If instead of paying out 9.52 per cent. dividends on the average the company had spent 8 per cent. on maintenance and depreciation, the normal amount for such purposes, the dividends would have been cut 1.4 per cent., or reduced to 8.12 per cent.

If the company had gone still further and spent an abnormal amount for maintenance and depreciation and increased the amount to 9.12 per cent., there would have been left for dividends 7 per cent. It does seem that when the public pays rates sufficient to pay operating expenses, including taxes, losses and damages, maintenance and depreciation, and the Commission accepts all items charged to such accounts by the company without question, and the amount available for maintenance and depreciation is above the normal, that had it been spent on the properties there would be no question but what the properties would have been kept up to 100 per cent. service efficiency, and over and above those amounts 7 per cent. dividends, the public has done its whole duty and the applicant should not complain.

There has been some discussion about certain stockholders who bought stock after the properties had depreciated, and that they would have an injustice done them if the properties were not restored to 100 per cent. service efficiency by the income. In answer to this, just remember the Commission, in its relation to the public on the one hand, and the company on the other, is dealing with the company as a legal entity and not with the personal stockholders. It is not the province of the Commission to go into the relation of one stockholder with another.

Dated at Lincoln, Nebraska, this eighth day of May, 1915.

LINCOLN TELEPHONE AND TELEGRAPH COMPANY v. FARMERS
INDEPENDENT TELEPHONE COMPANY OF RED CLOUD.

Application No. 2140.

Decided May 8, 1915.

**Permission to Disconnect Toll Lines from Switchboard of Competing
Company and to Terminate said Lines on Own Switchboard Granted.**

The Lincoln Telephone and Telegraph Company sought authority to disconnect two of its toll lines which were connected with the exchange of the Farmers switchboard at Red Cloud and to connect said lines with its own switchboard at Red Cloud and establish a connection between its switchboard and that of the Farmers company.

The Farmers company and the Nebraska Telephone Company had been operating competing switchboards and telephone systems in the city of Red Cloud. The Lincoln company, which was a strong competitor of the Nebraska company in southeastern Nebraska, but which did not reach Red Cloud, made a contract with the Farmers company whereby it agreed to build two toll lines, one from Superior and one from Hastings, into Red Cloud, and to furnish the Farmers company connection with said lines. Subsequently the Lincoln company purchased the lines and exchange of the Nebraska company at Red Cloud and thereby became a competitor of the Farmers company. It then sought to disconnect the Superior-Red Cloud and Hastings-Red Cloud toll lines from the Farmers company's switchboard and connect them with its own switchboard, agreeing to furnish the Farmers company with service over these lines by means of a connection between the Farmers company's switchboard and the Lincoln company's switchboard. The Farmers company maintained that this was a violation of the contract.

Held: That the only conditions in the contract governing the manner of connection of these toll lines with the Farmers company, provided that the Lincoln company should furnish the Farmers company connection with said lines, that no provision was made that the lines should terminate on the switchboard of the Farmers company;

That even if such provision had been made, as the contracts were entered into subsequent to the passage of the public utility law, they are subject to modification by the Commission whenever it appears that the interests of the general public served by such utilities require a modification;

That the proposed changes will improve the service rendered the public and permission will be given to the Lincoln company to terminate its toll lines on its own switchboard and to provide such trunks between its own switchboard and that of the Farmers company as may be necessary to handle adequately the business of the latter company.

OPINION.

By the Commission:

The Farmers Independent Telephone Company, remonstrator herein, hereafter referred to as the Farmers company, is a corporation organized and incorporated under and by virtue of the laws of the State of Nebraska, with its principal office and place of business at Red Cloud. Said company has been in the telephone business over ten years just prior to the filing of the application herein, and has during that time been furnishing both exchange and toll service in that community. It has in service approximately 350 farm and 210 city 'phones, and is operating stub toll lines which connect several telephone systems with its system.

The Nebraska Telephone Company, hereinafter referred to as the Nebraska company, also owned and operated a telephone system in Red Cloud of about 280 'phones and toll lines which extended generally all over that part of the State, and was a strong competitor of the Farmers company.

The Lincoln Telephone and Telegraph Company, applicant herein, hereafter referred to as the Lincoln company, operated many exchanges in southeastern Nebraska and toll lines extending over that part of the State, but did

not reach Red Cloud. This company was also a strong competitor of the Nebraska company generally in south-eastern Nebraska, both for exchange and toll business.

In order that the Lincoln company might get toll connections with the city of Red Cloud, it entered into two contracts with the Farmers company, by which the Lincoln company agreed to build toll lines from Superior to Red Cloud and from Hastings to Red Cloud. The terms of the two contracts are practically the same excepting one is for the building of the Hastings line and the other for the Superior line. The following is a copy of one of said contracts:

THIS AGREEMENT made and entered into this thirtieth day of April, 1910, by and between the Lincoln Telephone and Telegraph Company, of Lincoln, Nebraska, party of the first part, and the Farmers Independent Telephone Company, of Red Cloud, Nebraska, party of the second part.

NOW THEREFORE the parties hereto for themselves, their successors and assigns, in consideration of the mutual promises herein made, covenant and agree as follows, to wit:

Section 1. The first party agrees to construct and put in operation on or before the first day of October, 1910, a copper metallic toll line from the city of Superior, Nebraska, to the city of Red Cloud, Nebraska, and to furnish the second party connection with said line at Red Cloud, Nebraska. First party further agrees to furnish to the second party long distance telephone service at the rates adopted by the Independent Telephone System of Nebraska and under the rules and conditions adopted by said Independent Telephone System of Nebraska.

Section 2. The second party shall receive as full compensation for their services 25 per cent. of the actual charge for all the messages, exclusive of messenger service, which may originate at its exchange, it being understood that the charge for handling any one message shall not exceed 20 cents. Where business passes in part over the toll lines of both parties, each party shall receive a share of the net charge for each message in accordance with the rules and regulations of the Independent Telephone System of Nebraska, for the division of charges on such messages. Where messengers are required in the delivery of messages, second party shall be entitled to receive the actual cost of any messenger service which it shall provide.

Section 3. The second party agrees to make a monthly report to the first party of all toll business originating in its territory and passing over the lines of first party. These reports to be made on blanks furnished by the first party, and together with the net balance due the first party, as

shown by the reports, shall be forwarded to the first party at Lincoln, Nebraska, on or before the tenth day of each month.

Section 4. The second party hereby grants to the first party the privilege to use the top cross-arms on the second party's poles, or such part thereof as may be required within the corporate limits of said town of Red Cloud, upon which to string or maintain its wires. The second party agrees at its own expense to keep clear, free from crosses, grounds and other troubles, and in good working order any wires belonging to the first party, which may be located within the corporate limits of said town of Red Cloud, and to furnish such material as may be required for the repairing thereof at actual cost. And further, the second party hereby grants a license to the first party to connect with the telephone exchange or system of second party through its switchboards so that an interchange of business may be at all times carried on between said parties.

When so ordered from the general office of the first party, second party further agrees to keep clear, free from crosses, grounds, and other troubles, and in good working condition all circuits of the first party outside the corporate limits of said town and within Webster County at actual cost of material and labor. Bills for such are to be rendered monthly to the first party.

Section 5. Each of the parties hereto hereby agrees to transmit all messages originating on its lines or at its exchange, or on connecting lines or exchanges for points on the lines of the other party, or its connecting lines, over the lines of the party by and through said connection, when said routing constitutes a direct route for handling such business.

Section 6. It is understood and agreed that each party hereto will do all that is necessary to give full force and effect to the spirit of this agreement without further compensation or conditions than these specifically set forth.

Section 7. The second party further agrees that its apparatus and equipment now erected and hereinafter erected shall be maintained at such a standard as will afford facilities for first class service in connection with the lines of first party hereto, and second party also agrees that it will not only at all times operate its system and conduct its local business so as not to impair the local business of said second party nor the long distance business of said first party hereto, but will also make an effort to extend and enlarge the business of said first party.

Section 8. It is further agreed that if the first party finds it desirable or necessary, either from the volume of business or the nature of the service, to establish a separate switchboard in the exchange of second party and employ an additional operator or operators for the purpose of handling its long distance business, that it shall have the privilege of so doing. In the event of its so doing, however, the second party shall be entitled to receive 15 per cent. of the net exchange of all messages originating at its exchange.

Section 9. This contract shall be and remain in full force and effect during the period of twenty-five years from the date hereof and thereafter until ninety days written notice shall be given by either party to the other of its intention to terminate the same.

In witness whereof, the parties hereto have caused this contract to be signed by their duly authorized officers.

Party of the first part,

[SEAL] LINCOLN TELEPHONE AND TELEGRAPH COMPANY,
By FRANK H. WOOD, President.

Attest:

C. J. BILLS, Secretary.

Party of the second part,

[SEAL] FARMERS INDEPENDENT TELEPHONE COMPANY,
By S. BECKWITH, President.

Attest:

EDWARD HANSON, Attorney.

The lines were constructed and connections made with the switchboard of the Farmers company in accordance with said contracts. In January, 1912, the Lincoln company purchased the telephone system of the Nebraska company at Red Cloud and all its exchanges and toll lines in what is known as the South Platte territory, from Adams and Webster county east to the State line, and thereby became a competitor of the Farmers company's local exchange at Red Cloud. The applicant now seeks an order of this Commission, authorizing it to cut the Hastings-Red Cloud and Superior-Red Cloud toll lines off the Farmers company switchboard and connect them to its own toll-board that formerly belonged to the Nebraska company. It then proposes to connect the Farmers system with its toll-board by trunk lines between its toll board and the toll-board of the Farmers company. The Farmers company asserts that this will violate the terms of the contract hereinafter set forth, and that the said Farmers company will lose the primary control of the toll lines referred to.

The Lincoln company denies that the proposed change violates any provisions of the existing contracts and contends that the proposed circuit arrangement will increase the facilities and improve the service furnished to the Farmers company and to the public, and contends that as

long as it violates no provision of the said contracts, it has the exclusive right, the same as any other owner of property, to control and manage same.

It further alleges that the lines in question produce a very small revenue in their present condition, and that it is necessary that they be rearranged in order that sufficient business can be handled over them to enable the company to pay for their maintenance and operation; that under present conditions the Lincoln company has no connection between its own exchange in the city of Red Cloud and these toll lines now terminating there on the Farmers board, which are its exclusive property, and that it has an absolute right to make such changes in its terminals at Red Cloud as it desires, provided that it continues to give the said Farmers company connections with said lines which is its only obligation under its contract, and provided further that it does not injure the service which the public is receiving. The Lincoln company asks permission to make said change inasmuch as the Commission has general control over the service of all common carriers, and all changes made in the service must be first approved by it.

An examination of the contract shows that the only condition covering the manner of connection of the Farmers company with the said toll lines is found in Section 1 and provides that the Lincoln company shall furnish the Farmers company connections with said lines. There is no provision in either of said contracts to the effect that the Lincoln company shall terminate its lines on the board of the Farmers company and give them the exclusive use or control of same. In this connection, it may be noted that said contracts, as hereinbefore set forth and referred to, were made and entered into by the parties thereto on or about the thirtieth day of April, 1910, which was long after the time when the jurisdiction over rates, service and general control of common carriers were vested in the Commission. All such contracts affecting service are subject to modification by the Commission, upon a proper hearing, whenever it appears that the interests of the general public,

served by such utilities, can be best concerned. By terminating all of its lines on one toll board, the Lincoln company will be able to use them to better advantage to itself and to its patrons, and will also be in a position to furnish the Farmers company as good or better service than it receives over said lines in their present condition. If the lines are left in their present condition, the Lincoln company is entirely deprived of any use of the same in the handling of its business out of the city of Red Cloud.

Section 8 of the contract set out above, gives the Lincoln company the option of establishing a separate switchboard in the exchange of the second party for the handling of its toll business, and provides that in the event that it does so, that the revenue to be paid the second party shall be reduced to 15 per cent. commission on messages originating at its exchanges. Whether or not the changes to be made in the termination of its lines by the Lincoln company can be construed as the establishment of a separate switchboard in the exchanges of the Farmers company is not material in this proceeding, and it is unnecessary for this Commission to construe said provision.

If the Lincoln company shall hereafter attempt to reduce the commission to be paid the Farmers company to 15 per cent. under the terms of said section, the Farmers company can take the matter into the courts and protect such rights as it may have under said section.

The Commission, therefore, finds that the changes proposed to be made by the Lincoln company will improve the service rendered the public at Red Cloud. Permission is, therefore, given to the said Lincoln company to terminate the said toll lines on its own toll board at Red Cloud and to provide such trunks between its own toll board and that of the Farmers company as are necessary to adequately handle the business of the latter company; all said changes to be made at the cost and expense of the Lincoln company.

Made and entered at Lincoln, Nebraska, this eighth day of May, 1915.

IN THE MATTER OF THE APPLICATION OF THE SURPRISE TELEPHONE COMPANY FOR AUTHORITY TO MAKE CERTAIN CHANGES IN ITS RATES FOR SERVICE.

Application No. 2082.

Decided May 18, 1915.

Increase in Rates upon Granting of Free Interexchange Service Refused — Principle of Free or Flat Rate Interexchange Service Condemned.

The applicant sought authority to increase its one dollar per month rates at all its exchanges to \$1.50 per month, and to extend to all subscribers "county right," or free interexchange, service.

The applicant was charging at all its exchanges except David City (where it charged an individual business rate of \$1.50, a party line residence rate of \$1.00 and a rural line rate, including free service to all exchanges, of \$1.50 per month,) a rate of \$1.00 per month for all classes of service, and was providing "county right" service at 50 cents per month in addition. The revenue from these rates was insufficient to provide for a depreciation fund, to construct additional trunk lines between the various exchanges necessary in order to handle more efficiently the traffic, and to meet the costs of operation caused by the growth of the plant and changed conditions. Only about two-fifths of the subscribers of the company were availing themselves of the "county right" rate.

Held: That the proposed readjustment of rates would not be an improvement over existing conditions, but would only tend to aggravate those conditions by increasing the traffic much more than it would increase the revenues; that the flat rate would cause an increase of calls which are social or trivial in their nature, and would congest the line and interfere with important messages; that it would deprive the company of revenue by tempting non-subscribers to send their calls from the telephones of friends or business acquaintances; that it would make necessary the furnishing of more trunk lines and larger switchboards, would require more operators and add materially to the expense of operation; that the rate proposed would be discriminatory in that it would impose a charge upon a large class of subscribers who do not care for or use county service.

That the rate proposed would benefit neither the company nor its patrons, and the application should be denied.

APPEARANCES:

For applicant, *E. E. Miller*, secretary, and *D. L. Sylvester*.

For protestants, *J. R. Evans*, mayor, *E. L. Ryan* and *C. M. Skiles*, David City Commercial Club.

ORDER.

TAYLOR, *Commissioner*:

Applicant operates a telephone system of nine exchanges, with about 2,000 subscribers, its headquarters being at Surprise, Butler County. The exchanges composing the system are Surprise, Rising City, Shelby, Garrison, David City, Brainard, Dwight, Bruno and Bellwood. The plant is entirely metallic, there being no grounded lines. With the exception of David City, the rates are \$1.00 per month for all classes of service. At David City the rate for individual business is \$1.50 per month and for two- to four-party residence, \$1.00 per month, the farm line rate being \$1.50 with the privilege of free service to all exchanges. In addition to these rates there is a flat rate of 50 cents per month for the "county right," or for unlimited connections with all subscribers on the system.

The company proposes to increase all \$1.00 rates to a basis of \$1.50 per month and extend the "county right" service to all subscribers, that being the change involved in the application under consideration. It is claimed that more revenue is necessary to provide for a depreciation fund, no reserve having been created for that purpose, to construct additional trunk lines between the various exchanges so as to more efficiently handle the traffic, and to meet increased costs of operation brought about by the growth of the plant and changed conditions.

There are phases of the situation in which the company finds itself at this time that make it necessary for the Commission to determine whether the remedy proposed is the proper one under the circumstances. The adequacy or inadequacy of the present revenue is secondary, both from the interests of the company and the public, to the question as to whether the proposed readjustment of rates will be an improvement over conditions as they now exist. At the time this application was filed there were about 800 subscribers who were paying the added monthly rate of 50 cents for the full county service, leaving about 1,200 who had not availed themselves of the service. Thus a substan-

tial majority do not find the unlimited county service of enough value to warrant them in paying the added charge for it. In other words, three-fifths of the subscribers are content with their local exchange, preferring to pay the toll charge of 10 cents per message when necessity requires communication with another exchange in the system.

It has come to be a well recognized principle in establishing equitable rates for telephone service that the exchange is the unit upon which such rates should be determined. Within the exchange it has been found possible to so classify the users with respect to kind and quantity of service as to establish a fairly equitable schedule of flat rates for unlimited service. Theoretically, the only proper unit for ascertaining a rate, even within the exchange, is the message, the quantity of the service consumed, as measured by the number of messages, fixing the equitable charge that should be made to the patron, but because of mechanical and practical reasons it has not been found possible to adopt this method. Going beyond the exchange, however, the only proper and just method is the measured service. The reasons for this are obvious. Some patrons use such service but very little, others use it moderately, while others — and they are almost invariably a very small minority — use it a great deal. This is well illustrated by a study made by the Chester Telephone Company of the traffic over its toll lines for a period of a year. That study revealed the following conditions:

29 per cent. did not use the toll lines during the year.

26 per cent. paid less than 50 cents.

17 per cent. paid from 50 cents to \$1.00.

15 per cent. paid from \$1.00 to \$2.00.

8 per cent. paid from \$2.00 to \$5.00.

5 per cent. paid over \$5.00.

Presented in a different way, the study shows that 5 per cent. of the patrons did 40 per cent. of the talking and 13 per cent. did 62 per cent. of it. Over half of them did practically no talking. Had the rates been so arranged, however, as to provide for an unlimited service, these sub-

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scribers who made no use of the service beyond the local exchange would have been compelled to help pay the expense incurred by those who made the most of it. While the exaction of a flat rate for added exchange service prevents some of the abuses that are common to the so-called free service and tends to equalize the discriminations that inevitably grow out of the practice, it does not furnish a satisfactory remedy. A flat rate, for example, does not prevent the great number of calls, which are social or trivial in their nature, and which congest the lines and interfere with important messages. Neither does it prevent non-subscribers and transients from making use of the telephones of friends or business acquaintances to put through calls to neighboring exchanges, thus depriving the company of revenue to which it is justly entitled. A toll charge for all such messages invariably results in greatly reducing their number if it does not eliminate them altogether. As in the case of an unlimited free service, a flat rate influences some subscribers, and particularly the farm subscribers, to insist on being served by different lines or exchanges than those to which they properly belong, thus necessitating the construction and maintenance of superfluous equipment.

In one case (Application No. 1417)* the Commission found that the operating company had been put to the necessity of abandoning an exchange because the subscribers naturally tributary to it had insisted on being served by two or three neighboring exchanges. The unlimited free exchange made it possible for the patrons to gratify their whims with respect to the selection of the exchange by which they were to be served, thus imposing upon the company an unnecessary expense, which, naturally, had to be taken care of in the rates. Either the so-called free exchange or the flat rate for added exchange service results in a greatly increased traffic, as is indicated above. This imposes upon the company the necessity of furnishing added equipment

* *In the Matter of the Application of the Lincoln Telephone and Telegraph Company to Discontinue the Exchange at Vesta, etc.* Commission Leaflet No. 28, p. 441.

in the form of trunk lines and larger switchboards, requires more operators and adds materially to the expense of operation. In fact, this condition has already been brought about in the case of applicant company. The traffic caused by the "county right" subscribers is so overloading the trunk lines connecting the various exchanges that the service is slow and much complaint is made for that reason. Testimony at the hearing respecting the service was to the general effect that within the local exchanges it is fairly satisfactory, but that the trunk lines between towns are always busy and calls are delayed an unreasonable length of time. Applicant admits that it does not have sufficient trunking facilities to give efficient service, and that is offered as one of its principal reasons for desiring more revenue. As we have pointed out, however, its methods of increasing the revenue only promises to aggravate the conditions, for, as it increases the revenue, it will greatly increase the traffic. The extension of unlimited service to 1,200 additional subscribers will undoubtedly greatly multiply the number of calls. The contention of the company that at the present time patrons paying the \$1.00 rate frequently get the benefit of the county service is no doubt well founded, as is the further contention that a portion of the time of the operators is occupied in attempting to detect such contraband calls and to prevent them being completed. This abuse can hardly be so general, however, as to seriously impair the service, nor would the abolishing of it compensate for the extra burden that would be thrust upon the company by the proposed extension of the unlimited service. The extension of the unlimited service also involves the sacrifice of a considerable portion of the company's toll revenue, for the reason that those subscribers who do not now pay the flat rate for the "county right" pay a message fee of 10 cents when communicating with other exchanges. Applicant estimates that under the universal application of the flat rate the loss of toll receipts would amount to \$500 annually. As that represents but about four calls per year per subscriber it would appear to be very conservative.

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It is incumbent upon this Commission to determine, not only what is a reasonable amount of revenue necessary to the operation of a telephone plant, but it is equally necessary to see that the charges that produce that revenue are distributed equitably among the various subscribers. From the foregoing it is apparent that the rate proposed in this application would result in various forms of discriminations, not the least of which would be the imposing of a charge upon a large class of subscribers who do not care for the service. These patrons, who at the present time make no use of the county service, or at the most very little use of it, would under the proposed plan be compelled to pay for something that they do not use. On the other hand, those subscribers, the nature of whose business makes it necessary or whose inclinations make it desirable, to use the service a great deal, would be getting something that they would not pay for. With respect to the situation in David City a serious discrimination would result because of the present adjustment of rates at that point. The present schedule provides for a party-line residence service at the rate of \$1.00 per month. Under the proposed rate these party-line subscribers would be compelled to pay \$1.50 per month, which is the same rate charged for individual line service. As a consequence of this discrimination, either a large number would discontinue service or a majority would demand individual line service. In the former case the company would be compelled to sacrifice considerable revenue, and in the latter it would be put to great expense for the reconstruction of its plant to meet the new conditions.

The foregoing consideration of the difficulties involved in the application of the rate herein proposed make it clear to the Commission that neither the company nor the patrons would be benefited by the readjustment and it necessarily follows that the application should be denied. It is unnecessary for the purposes of this case to present an analysis of the financial condition of the company, although a considerable amount of testimony was submitted relative

to the need for more revenue. A study has been made of this testimony, however, and it would indicate, although it is not conclusively shown, that the present revenue is insufficient. The company has no depreciation reserve and is confronted with the necessity for considerable reconstruction. Its operating expense is increasing with the increase in the cost of labor and growth of the system. In view of the fact that the remedy proposed by the company is herein found not to be the proper one it will be necessary for the company to work out some other readjustment of rates that will be equitable and that will accomplish the desired result.

It is, therefore, ordered, That the application herein be, and the same hereby is, denied.

Made and entered at Lincoln, Nebraska, this eighteenth day of May, 1915.

IN THE MATTER OF THE APPLICATION OF THE JOHNSTOWN
TELEPHONE COMPANY OF JOHNSTOWN, NEBRASKA, FOR
AUTHORITY TO INCREASE ITS EXCHANGE RATES, ETC.

Application No. 2417.

Decided May 21, 1915.

**Increase in Rates Authorized — Discount for Prompt Payment Equal to
Increase Authorized — Rules Concerning Collection of Switching
Fees and Toll Charges Approved.**

ORDER.

WHEREAS, the Johnstown Telephone Company has made application to the Nebraska State Railway Commission for authority to increase all of its exchange rates as of record in this office on this date to the extent of 25 cents per month for each class of service, with a provision that if rental is paid within 15 days from the time when the account becomes due a discount of 25 cents will be made in each instance, the effect being to leave the net rates just as they are at the present time, provided payments are made in the time limit specified, and also further authority to publish the following rules, governing the switching of independent rural lines:

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"This company shall be notified at once upon the installation of any new 'phone upon such lines as do not belong to this exchange. All switching fees are due six months in advance and shall be collected by the proper officer of the independent rural company for which switching service is performed, and shall be paid to the Johnstown Telephone Company within thirty days from date due. In case such switching fees are not paid within the stated time, the manager of the Johnstown Telephone Company shall be authorized to refuse connections to the entire line.

All toll messages shall be assessed to the proper officer of the independent rural telephone company for which switching service is performed and shall be paid to the Johnstown Telephone Company, settlement to be made every thirty days. In case tolls are not settled when due, the operator of the Johnstown Telephone Company is authorized to refuse all toll calls over the entire line which is in default of payment.

Any independent line connected with the Johnstown Telephone Company shall be responsible for the telephone conduct of its respective subscribers and shall require them to comply with the established rules of the Johnstown Telephone Company."

And it appearing to the Commission upon due investigation and consideration that the application is reasonable and warranted by existing conditions,

It is ordered by the Nebraska State Railway Commission, That the desired authority be, and the same is, hereby granted, the revised rates and the rules as above authorized to become effective on June 1, 1915.

Made and entered at Lincoln, Nebraska, this twenty-first day of May, 1915.

IN THE MATTER OF THE APPLICATION OF THE PLATTE VALLEY
TELEPHONE COMPANY FOR PERMISSION TO ISSUE AND SELL
AT PAR \$54,900 OF ITS CAPITAL STOCK.

Application No. 2291.

Decided May 26, 1915.

Issue of Stock at Par Authorized — Capital Account, Operating Expenses
and Earnings, Valuation of Tangible Property and Prospect of
Future Development Considered.

ORDER.

CLARKE, *Chairman*:

Petitioner herein is a corporation, organized and existing under the laws of the State of Nebraska, having an au-

thorized capital stock of \$100,000 of which sum there has been issued and is now outstanding the sum of \$45,100. It is engaged in the construction, maintenance and operation of telephone exchanges and toll lines in Wyoming and Scottsbluff and Morrill counties, Nebraska.

It petitions for authority to issue and sell its capital stock at par in the sum of \$54,900 for the purpose of paying outstanding indebtedness and to provide funds for needed extensions.

The asset and liability statement of the petitioner, as of December 31, 1914, is as follows:

Total plant	\$136,969 13	
General equipment — furniture and fixtures.	1,789 53	
General tools, teams and motor vehicles.	4,119 27	
Stock of other companies.	175 00	
Plant supplies	3,737 43	
Cash and working advances.	228 68	
Accounts receivable	3,642 15	
Capital stock, common.		\$45,100 00
Bonds outstanding		30,000 00
Bills payable		26,500 00
Accounts payable		2,467 34
Accrued liabilities not due, interest, taxes and insurance		833 08
Depreciation reserve		36,421 75
Surplus		9,339 04
	<hr/>	<hr/>
	\$150,661 19	\$150,661 19

Its operating statement for the past three years, ending June 30, is as follows:

<i>Year</i>	<i>Gross Revenue</i>	<i>Operating Expense</i>	<i>Net Revenue</i>
1912	\$25,942 64	\$16,580 86	\$9,361 78
1913	30,999 92	16,983 40	14,016 52
1914	36,720 72	21,992 64	14,728 08

The petitioner submitted, in support of its application, a most complete and carefully prepared inventory of its properties, which, exclusive of any intangible values, such as franchise, good will or going concern value, etc., showed a

reproduction value of \$159,267.40 and a present value of \$132,906.18.

The engineer of the Commission has inspected and checked over two hundred miles of petitioner's poles, lines and all of its exchanges, and approves of the inventory and valuation submitted as correct, in the following terms:

"The cost units used in this appraisalment are made a part of this exhibit. They are set out in detail and based on the actual costs experienced by the company in building this plant. The company uses the Interstate Commerce Commission's methods of accounting, and the unit costs referred to are based on detailed work reports that show the actual amount of labor and material going to make up the cost to the company of each item of property in place.

In view of the correctness of this inventory and the reasonable, consistent and well supported unit costs applied to the various items of value, I am pleased to accept and approve the values set out by the company.

Seventy-five per cent. of this property is practically new. The tremendous development that has taken place in the North Platte Valley in the last five years has called for a large expenditure for telephone property to keep pace with the increasing demand for service. The company's lines extend from Guernsey, Wyoming, to Bridgeport, Nebraska, and include exchanges at Guernsey, Torrington, Morrill, Mitchell, Scottsbluff, Gering, Bayard, and Minatare, with the necessary toll line connecting these exchanges.

The plant is well engineered, as it has evidently been built to provide telephone service for the rapidly increasing population. In view of the fact that this is an irrigated country and, therefore, capable of a very high development, it seems reasonable to assume that there will be a settler for every one hundred acres of irrigated land. This means that there will be, within the next five or six years at least five subscribers for every mile of pole line, whereas there are only two or three subscribers to the mile in the eastern part of the State."

The Commission, upon consideration thereof, and being fully advised in the premises, finds that the issuance of the securities prayed for is reasonably required for the purposes provided for by law, and should be allowed.

It is, therefore, ordered, That the Platte Valley Telephone Company be, and the same is, hereby authorized to issue and sell at par its capital stock in the amount of \$54,900, the proceeds of the sale of said stock to be used for the purpose of discharging any outstanding legal in-

debtedness, and for the payment of cost of additions and betterments, and none other.

It is further ordered, That the petitioner be, and the same is hereby, directed to make a report to the Commission, showing in detail the amounts of said stock sold, the amount realized thereon, and the application of the proceeds thereof, within thirty days of the date when the unreported amount thereof shall aggregate the sum of \$50,000.

It further ordered, That the petitioner herein be, and the same is hereby, directed to set aside, out of its operating income, an amount not less than 8 per cent. of the physical value of its property, the proceeds of which shall be used for current repairs, maintenance and depreciation.

Made and entered at Lincoln, Nebraska, this twenty-sixth day of May, A. D. 1915.

NEW HAMPSHIRE.

Public Service Commission.

CITIZENS' TELEPHONE COMPANY. PETITION FOR AUTHORITY
TO EXTEND LINES INTO GILMANTON AND LOUDON.

Decided June 8, 1915.

**Authority to Extend Lines into Occupied Territory Refused — Sentiment
in Opposition to Competing Telephone System Considered.**

APPEARANCES:

For the petitioner, *Shannon and Tilton.*

For the New England Telephone and Telegraph Company and the Winnepesaukee Telephone Company, *Matt B. Jones.*

For the Canterbury and Boscawen Telephone Company, *Martin and Howe.*

REPORT.

The petitioner's principal office is in the city of Laconia, but it does business also in the towns of Bristol, Canterbury, Franklin, Gilford, Hill, Laconia, Meredith, New Hampton, Sanbornton, Tilton and Belmont. The petition asks for authority to extend lines from Belmont into the towns of Gilmanton and Loudon.

The Canterbury and Boscawen Telephone Company, doing business in Loudon, and the New England Telephone and Telegraph Company and the Winnepesaukee Telephone Company, doing business in Gilmanton, appear in opposition to the granting of the petition. The Union Telephone Company also does business in Gilmanton, but in a part of the town not proposed to be immediately entered by the petitioner. The Union company has connection with the New England and Winnepesaukee companies, and does not compete with them. Said company has not entered any appearance in these proceedings. The local business in

Belmont is divided between the Winnepesaukee company and the petitioner, the Winnepesaukee company having 15 subscribers in Belmont village, and the petitioner 91. In Gilmanton the Winnepesaukee company has 129 subscribers.

This petition had its inception in a request made by certain business men of Belmont that the petitioner extend its lines into the adjoining towns of Gilmanton and Loudon. Following this request, in the latter part of 1914, petitions were circulated in those towns and in the town of Belmont requesting the petitioner to make the extensions for which authority is requested in the pending petition, and a considerable number of signatures were obtained thereto. six persons in Loudon and twenty-one in Gilmanton also signed a paper stating that they would take service of the Citizens' company if certain designated extensions in the towns in question were made. Most of the persons so signing were then and are now subscribers of the Winnepesaukee company.

The proposed lines have an aggregate length of seven miles, and for six miles are parallel to existing lines of the Winnepesaukee company.

A hearing was begun at Concord on February 18, 1915, and was continued at the request of the petitioners to give individuals who desired to support the petition further opportunity to appear. The hearing was concluded at Concord on May 14, 1915, but no one appeared in support of the petition at the final hearing except the attorneys and officials of the petitioner.

At such final hearing the petitioner withdrew its request to enter the town of Loudon and the hearing proceeded upon the request for authority to enter Gilmanton.

The Winnepesaukee company presented a remonstrance from citizens of Gilmanton, in part as follows:

"We * * * are opposed to the granting of the petition of the Citizens Telephone Company for the right to construct lines and establish telephone stations in these towns. We are of the opinion that the granting of this petition would result in dividing the present subscribers into two groups,

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and that this would reduce the efficiency of our service and be very undesirable.

"We, therefore, respectfully ask that the petition of the Citizens Telephone Company be not granted by your Honorable Board."

This remonstrance, it was testified, was signed by 122 out of 129 subscribers of the Winnebawaukee company in Gilmanton, and it appeared also that the same was signed by 17 out of 21 persons who, in 1914, had signified their wish to take service of the petitioner.

We are satisfied from the evidence that the predominating sentiment in the town of Gilmanton is opposed to the introduction of a competing telephone company into that town, and that the desire for the proposed extension is entertained principally by residents of Belmont who wish to extend the area within which they may hold telephonic communication over the lines of the Citizens' company with which they now have connection.

No complaint is made as to the character of the service of the telephone companies now doing business in Gilmanton or as to the rates charged for such service. Under these circumstances we do not see how this petition can be granted if the apparent purpose of the legislature to restrict needless duplication of utility investment is not to be abandoned.

The petition will accordingly be denied.

Filed June 8, 1915.

NEW JERSEY.

Board of Public Utility Commissioners.

**IN THE MATTER OF THE COMPLAINT OF THE NATIONAL TURN
VEREIN v. NEW YORK TELEPHONE COMPANY.**

Decided May 28, 1915.

**Higher Rates for Service through Telephone Equipped with Coin Box
than for Service through Standard Telephone Approved — Rates
for Public and Semi-Public Telephones Considered —
Absorption of Coin Box Charge Discussed.**

Complaint alleged that the rates of the respondent for telephone service furnished to the complainant at its club room were unreasonable.

The respondent furnished the complainant semi-public service by means of a telephone equipped with a coin box. A minimum guarantee, which bore a certain relation to the regular rate charged in that locality, was required, and in addition a maintenance charge of \$12.00 per annum was made for the use of the coin box. This latter charge was to cover the maintenance of the coin box and also certain other expenses involved in furnishing this class of service, such as additional bookkeeping and additional operating expenses. The complainant admitted that the use of the coin box was a protection to it, in that it prevented people from making calls without paying the complainant for them.

The Board considered the schedule rates of the respondent for both public and semi-public telephone service, and also in the case of semi-public telephones considered the advisability of the absorption of the additional charge made for coin boxes.

Held: That it is not improper to differentiate between public pay stations and semi-public telephones.

That the arrangement of the schedule for semi-public telephones in such a way that subscribers to this class of service are charged rates that very closely approximate those paid by ordinary subscribers is proper.

That the advantage obtained by the subscriber for semi-public telephone service through the use of a coin box warrants a separate charge for the service involved in maintaining the coin box, together with the additional duty and responsibility thrown upon the switchboard operator and the accounting department of the telephone company.

APPEARANCES:

F. W. Baumbusch, for the complainant.

Frankland Briggs, for the company.

REPORT.

The controversy in this matter turns upon the reasonableness of that portion of the rate schedule of the New York Telephone Company under which service is furnished in public and in semi-public places.

Examination of the rate schedules of the New York Telephone Company shows that service in strictly public locations is furnished under two general conditions:

(1) Where the company itself arranges for space and installs public telephones without arranging for supervision on the part of a tenant;

(2) Where arrangement is made with persons who are designated as "public telephone agents." Such locations are confined to hotels, cigar stores and other stores which are sufficiently public and open at reasonable hours.

Where no arrangement is made with the tenant for supervision, the instruments are equipped with coin boxes so arranged that the necessary coins must be deposited before the exchange operator will furnish the required service.

Service is furnished by the telephone company in clubs, boarding houses, educational institutions, hospitals, asylums, waiting rooms of physicians, apartment houses and other semi-public places where the use is sufficient to warrant the installation. Telephones in such locations are installed with or without coin boxes, but where installed without coin boxes the regular schedule of rates applies for service in that particular locality.

Where coin box service is furnished, a minimum guarantee is required, which bears a certain relation to the regular rate charged in the particular locality, and in addition to this a maintenance charge of \$12.00 per annum is made for the use of the coin box.

As stated above, at such locations the subscriber has the choice of service at the regular rates, either message or flat rate as may apply in the particular territory, or he may obtain service in accordance with the schedule provided for "semi-public" telephones.

If the service is furnished in accordance with the regular schedule of rates, no coin box is applied, and the subscriber is responsible for all calls sent out from his telephone. Where the coin box is installed, however, the telephone company assumes all responsibility for collecting the charges, with the exception of what may be required from time to time to make up the minimum charge and the charge of \$12.00 per annum for the maintenance of the coin box.

The maintenance of the coin box does not of course amount to \$12.00 per annum. This charge is justified by the company because of the other expenses involved in maintaining service of this class. This involves the keeping of the necessary records at the telephone exchange, and usually involves considerably more work on the part of the operator. In using the ordinary telephone, the subscriber asks for a certain number, and as soon as the subscriber called for answers, the conversation may commence. With a coin box telephone, however, the operator must first ascertain if the subscriber called is available, and does not establish the through connection until satisfied that the called subscriber has answered, and until the calling person has deposited the necessary toll.

It will thus be noted that the work of the operator in establishing a connection between a coin box subscriber and any other is greater than in the case of the ordinary subscriber.

It was suggested that in the case of the National Turn Verein an ordinary telephone might be installed, but the complainant admitted that under present conditions it was desirable that the company should be responsible for all collections, as under former conditions, before the installation of the coin box, there had been more or less controversy with regard to telephone calls which it was claimed had not been used. In other words, the complainant admitted that there was protection to the subscriber in the use of a coin box. He stated:

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"Our place being a club house, it used to, under the old system of having just a direct wire, cost us quite a sum of money during the year by reason of people making calls out of town and then paying only for a local message."

The Board's inspector in first reporting on this matter expressed the opinion that if the amount of business transacted over a particular telephone was sufficient that the maintenance charge for the coin box ought to be absorbed. With this opinion in general the representatives of the company did not disagree, but contended that the revenues necessary to be obtained from each such coin box which would be sufficient to warrant the absorption of this maintenance charge was greater than was ordinarily obtained from any such telephone.

In the city of Newark, the minimum charge for a semi-public telephone is 17 cents per day, or \$62.05 per annum. In addition to this minimum guarantee, the charge referred to of \$12.00 per annum is made for the coin box maintenance, making a total of \$74.05. All local messages are paid for at the rate of 5 cents each. The ordinary subscriber would have to use at least 1,600 messages in a year in order to get a rate as low as 5 cents per message. The use of any smaller number of messages in the year would result in a higher net cost per message. In other words, 600 messages would cost 6½ cents each; 800 messages would cost 6 cents each; 1,000 messages 5.7 cents each.

It is the company's contention that it would be an improper discrimination to allow service on a straight 5 cent rate for a semi-public telephone unless an amount was received from such telephone equal to the amount for which the regular subscriber obtains service at 5 cents per message.

Where a larger amount of service is required, it is found that the message rate for Newark provides a charge of \$90.00 for 2,000 messages, or a net charge of 4½ cents each; while 2,000 messages used on a semi-public telephone will cost \$100 for the messages plus \$12.00 for the maintenance of the coin box. With a still larger number of

messages used per annum the rates diverge more widely. This, however, it is claimed by the telephone company, is necessary if proper consideration is to be given to the extra cost imposed upon the telephone company in the operation of the coin box system as explained heretofore.

In the opinion of the Board, the difference in the method of charge does not impose upon the customer an undue burden, except perhaps where the total charge involved per annum exceeds \$90.00 or \$100.

No evidence was submitted to show that any semi-public telephone involved the use of so much service per annum per telephone.

In the case before us, it was testified by the complainant that the total amount of local service supplied to the Turn Verein amounted for a year to \$68.60. To this should be added \$12.00 charge for coin box maintenance, making a total for the year of \$80.60, or for the number of messages used a net charge of 5.87 cents per message.

CONCLUSIONS.

(1) The Board does not think it improper to differentiate between public pay-stations and semi-public telephones.

(2) The arrangement of the schedule for semi-public telephones in such a way that subscribers to this class of service are charged at rates that very closely approximate those paid by ordinary subscribers is also proper.

(3) The advantage obtained by the subscriber for semi-public telephone through the use of the coin box warrants a separate charge for the service involved in maintaining the coin box, together with the additional duty and responsibility thrown upon the switchboard operator and the accounting department of the telephone company. Upon the testimony submitted in this case, the Board is unable to finally pass upon the question of the reasonableness of the charge and will, therefore, dismiss the complaint, without prejudice, however, to a reconsideration of the portion of the schedule involved in this proceeding at any time in the future.

An order will so enter.

ORDER.

This case having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report, containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof,

It is ordered, That the complaint in this proceeding be, and it is hereby, dismissed, without prejudice to a reconsideration of the portion of the schedule involved in this proceeding at any time in the future.

Dated May 28, 1915.

APPLICATION OF THE DELAWARE AND ATLANTIC TELEGRAPH
AND TELEPHONE COMPANY FOR APPROVAL, UNDER SEC-
TION 24, CHAPTER 195, LAWS OF 1911, OF ORDINANCE
ENACTED BY TOWN OF ALPHA, WARREN COUNTY, NEW
JERSEY, ON DECEMBER 28, 1914.

Decided June 1, 1915.

**Statutory Provision "Once a Week for at Least Two Weeks"
Interpreted.**

Held: That the provision in the statute that a petition for a franchise shall not be considered by a municipal board until public notice shall be given by publication in a newspaper, "once a week for at least two weeks" before the meeting of said board at which the application shall be considered, means that the first publication must be at least fourteen days prior to the date of the meeting. Publication once a week in each of two calendar weeks is insufficient unless the first publication is made at least fourteen days before the meeting.

APPEARANCES:

Paul H. Burns and *J. L. Swayze*, for petitioners.
Frank H. Sommer, for Board.

REPORT.

Application is made to this Board by the Delaware and Atlantic Telegraph and Telephone Company for approval

of an ordinance of the borough of Alpha, dated the twenty-eighth day of December, 1914, granting permission to the Delaware and Atlantic Telegraph and Telephone Company to erect, construct, lay and maintain all necessary poles, wires, cables, cross-arms and conduits, manholes and other fixtures and appliances for its telegraph and telephone lines in, upon, along, over and under each and every of the public roads, streets, alleys and highways of the borough of Alpha in the county of Warren and State of New Jersey.

The matter was set down for hearing on Tuesday, February 23, 1915, at Trenton. Objections were raised against the approval of the ordinance and the matter was laid over until Tuesday, March 30, 1915, and was then heard and briefs submitted by counsel for the petitioner.

The procedure adopted in connection with the passage of the ordinance was that provided for in Chapter 36, Laws of 1906, Limited Franchise Act, so called, which, among other things, provides:

"Upon the filing of such petition, the same shall not be considered by the board or body of such municipality authorized by law to make the grant therein petitioned for, until public notice shall be given by publication in one or more newspapers published and circulated in said municipality, or, if there be no newspaper published in said municipality, then in one or more newspapers published in the county in which said municipality is located, to be designated by said board or body, *once a week for at least two weeks* and by posting such notice in five of the most public places in said municipality for *at least fourteen days* before the meeting of the said board or body at which the said application shall be considered."

The day fixed for the consideration of the petition by the municipality was November 9, 1914, at 8 o'clock P. M. The notice of the hearing was published in the "Washington Star," a newspaper published in the county of Warren and circulating in the borough of Alpha, on October 29 and November 5, 1914. The notice was published in the newspaper *once a week in each two calendar weeks*, but the actual time or period of publication was one week and four days, instead of fourteen days or two whole weeks.

The question for determination is whether the requirement of the statute that notice be published "*once a week*

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for at least two weeks” means merely two publications once a week in each of two weeks, or whether it means two whole weeks, fourteen days, period of time should intervene between the first notice and the date of hearing.

(1879) In *Parsons v. Lanning*, 27 N. J. Eq. (C. E. Green), p. 70, the court had under consideration an act relative to sales of lands under a public statute or by virtue of any judicial proceeding (Revision, p. 752, Comp. Stat., Vol. 4, pp. 4667 and 4668) which provides that notice of the sale be given by public advertisements set up at five or more public places in the county, one whereof shall be in the township, borough or city where such real estate is situated, of the time and place of such sale at least two months next before the time appointed for the sale and by notice published in two of the newspapers printed and published, etc., *at least four weeks successively once a week next preceding the time appointed for the sale.*

The Chancellor, at page 70, says:

“The notice in this case was published in one of the two newspapers, ‘The Princeton Press’ for the first time on the fifteenth of January. That is a weekly paper published on Saturday. The sale was advertised to take place on the tenth of February following. This publication was not a compliance with the requirement of the statute. The notice by advertisement in the newspapers, is to be for four weeks next preceding the day appointed for the sale. There must be four whole weeks between the first insertion of the advertisement in the newspaper and the day fixed for the sale. There were only twenty-six days in the publication in ‘The Princeton Press.’ There were indeed four insertions in that paper, viz.: on the fifteenth, twenty-second and twenty-ninth of January and on the fifth of February but that is not a compliance with the direction of the act. * * * For this defect in the notice, the sale will be set aside.”

(1879, Sp. Ct.) In *State, Barclay, Pros. v. Elizabeth*, 41 N. J. L. (12 Vr.), p. 517, the court had under review certain sections of the act to revise and amend the charter of the city of Elizabeth (P. L., 1863, p. 109), which, among other things, provided with respect to assessment and collection of taxes as follows:

“Public notice of the time and place of the sale of lands and real estate under the provisions of this act shall be given by advertisement, signed by

the City Treasurer and published in a newspaper printed and published or circulating in said city for the *space of six weeks at least once in each week* before the time appointed for such sale."

Reed, J., at pages 518 and 519, says:

"The first insertion would not make six weeks previous to the said sale, although there were six insertions, one in each week. Six weeks should intervene between the first insertion and the day of sale. The constructions given by the Chancellor to the provisions of the 'act relative to the sales of land under a public statute or by virtue of any judicial proceedings' which directs the notice to be published *at least four weeks successively once each week* next preceding the time of sale, was that the first publication must be made *four whole weeks* next preceding the day of sale. *Parsons v. Lanning*, 12 C. E. Green, 70.

"This is clearly the only rational interpretation, and applies to the section of the charter under which the present advertisements were made. The sale and proceedings thereon will be vacated with costs."

(1894, Sp. Ct.) In *Pardee v. Perth Amboy*, 57 N. J. L. (28 Vr.), p. 106, the court passed on a section of an act entitled "An Act to Revise the Charter of the City of Perth Amboy," which provided, with respect to assessments for city improvements, as follows:

"Whereupon said clerk shall cause to be inserted in a newspaper published and circulating in said city for *at least two weeks*, or if no newspaper be published in said city, then in some newspaper published in the county of Middlesex and circulating in said city, a notice of filing of said report."

Magee, J., on page 108, says:

"The time fixed by counsel for considering the assessment reported and hearing objections thereto, was January 18, 1892. The notice published in a newspaper is shown to have been first inserted on January 9, 1892. This did not satisfy the requirement of a publication for *at least two weeks*. *Barclay v. Elizabeth*, 12 Vr. 517; *Parsons v. Lanning*, 12 C. E. Green, 70.
* * * The assessment and resolution of confirmation must be set aside."

In *Hodge v. United States Steel Corporation*, 64 Eq. (19 Dick. Chan.) p. 90, the court had under consideration a certain provision in the act of 1902 which required that before any corporation could issue bonds for the purpose of retir-

ing preferred stock, they had to show that dividends exceeding a rate of 5 per cent. per annum had been paid for a period of at least one year next preceding the meeting at which the resolution authorizing retirement is adopted.

Emery, V. C., on pages 101 and 102, quotes with approval *Parsons v. Lanning*; *State, Barclay v. Elizabeth*; *Pardee v. Perth Amboy*, cited *supra*.

On appeal, Van Syckel, J., in 64 Eq. (19 Dick.), p. 821, said:

"Our laws require publication of notice of sale 'at least four weeks preceding the time of sale.' It has been uniformly and properly held to require a publication for four full weeks once a week and that the publication must begin four weeks next before the day of sale, and that four full weeks must elapse before the first publication and the day of sale. The statute requires that there shall be four weeks notice of sale and if sale can be made after four weekly publications it might be made after the expiration of only twenty-two days. A publication has no relation to a previously elapsed period; it is a publication only on the very day it is made while a dividend relates to and is for a time previously run."

(1912) In *Trenton Trust, etc., Co. v. Fitzgibbon Crisp*, 81 N. J. Eq., 11 Buch. p. 1, the court was considering the present statute with respect to sale of lands (P. L. 1912, p. 131) which provides that the advertisement of sale shall be published four times in two newspapers at least once a week during four consecutive calendar weeks, "the last publication to be not more than seven days prior to the time appointed for selling the same." The last publication in this case appeared in the newspaper on the day of sale.

Walker, Chancellor, on page 2, says:

"And it was held in *Parsons v. Lanning*, 27 N. J. Eq. (12 C. E. Green) 70, to require four whole weeks between the first insertion in the newspaper and the day fixed for sale. The only bearing that case has upon the one in hand, as I view it, is to establish the facts that 'weeks' are the periodical units which must be observed in the matter of advertising, that is, that the advertisement must be made four whole weeks next preceding the day of sale, and that the day of sale may not be within the last week. This case was followed in the Supreme Court in *State v. Elizabeth*, 41 N. J. L. (12 Vr.) 517. * * *

"Here it must be observed 'days' are the periodical units of time within which the last advertisement is to be inserted,—that is to say, it may be in-

serted one day prior to the time appointed for the sale or two days, etc. It is as though the act read: 'The last publication to be not more than one, two, three, four, five, six or seven days prior to the time appointed for selling the same.' " * * *

On page 8:

"Now, by the application of these rules I must ascribe a meaning to the words 'days prior,'—that is, days prior to the sale, found in our statute, and it may be *one day*, because *day* is the unit of time mentioned in and contemplated by the statute, properly written in the plural, *days*.

"If I adopted the construction contended for on behalf of the receiver, I would have to excise from the statute the words 'days,' because if the last publication of notice of sale should be made on the day of sale, then it would be some *hours* but not *days*, or even a *day* prior to the sale. As already seen, the last advertisement, as I view it, may be on some day (not more than seven) before the sale, but cannot be an *hour* or any number of *hours* before the sale on the day of sale. This, in my judgment, is the only way in which the words 'prior' and 'days' (which latter includes 'day') may be read together and given the full force and effect which the legislature intended should be given to them."

To the same general effect is *Early v. Doe*, 66 How. (U. S.) 610; 14 L. E. 1079.

It follows, therefore, that in the statute under review, "week" is the periodical unit to be considered and observed in the matter of advertising under the statute; that is to say, the advertising or publication of the notice must be for two whole weeks or fourteen days, the first publication to appear in the newspaper at least fourteen days before the petition is considered.

It is contended by counsel for the petitioner that the word "week" as used in the statute means "calendar week" beginning Sunday morning and ending Saturday midnight, and that irrespective of the number of days of publication, if the notice required by the statute is published *once a week* in two such weeks, it is a compliance with the statute.

If that construction is sound it is possible for the day fixed for the hearing to be on, say, Tuesday, the first publication to appear in the newspaper on Saturday, which is in one calendar week, and the second on Monday, which is in the second calendar week, and there would be a publication

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once a week in two calendar weeks, but only three days, instead of fourteen days, actual notice given.

It is to be noticed, however, that this construction of the statute ignores, it seems to us, two things: first, the number of days, or that time is an element to be taken into consideration; and second that there is any kind of week other than a calendar week. We cannot think that this is the intention of the legislature.

In the cases cited, as here, the language of the statute is *once a week for at least so many weeks*. In each case the number of days or time is the controlling element, each requiring the full number of days corresponding to the number of weeks; that is to say,—if it be two, four, six or twelve weeks, it must also be fourteen, twenty-eight, forty-two or eighty-four days, so that “week” is the periodical unit to be dealt with, meaning strictly a period of time of seven days, regardless of what day in the week the period begins. It may begin on any day in the week, but the period starts to run from the first publication and then continues for fourteen days before the matter, concerning which the notice is given, is considered.

The undisputed fact here is that the first publication of the notice appeared in the newspaper eleven days only prior to the consideration of the petition instead of fourteen days or two whole weeks, and that is not a compliance with the direction of the act, and the advertisement, therefore, is insufficient.

The Board withholds its approval of the ordinance and the petition is dismissed.

Dated June 1, 1915.

OHIO.

The Public Utilities Commission.

DR. F. E. PLUMMER *v.* THE UNITED TELEPHONE COMPANY.
No. 473.

Decided May 13, 1915.

**Residence Rate Held Applicable to Telephone Installed for Ordinary
Residence Purposes, Although Physician's Office is Maintained
in the Same House — Complaint Dismissed for Lack of
Proper Party Complainant.**

Complainant sought an order directing the respondent to install in complainant's residence a telephone and to charge the regular residence rate therefor.

Complainant was a physician and maintained his office in certain rooms of his residence. Respondent had in effect a rule providing that any subscriber who maintained an office in his residence should pay the regular business rate for his telephone. Complainant alleged that the residence was owned by his wife and that she desired regular residence service, that he did not desire a telephone in connection with his business, but that if a business call should come in over the telephone in his residence, he would answer it.

Held: That as the complainant did not want a telephone, but sought to have one installed in his wife's name, and as the wife was not a party to the proceeding, the complaint should be dismissed.

That should the wife of the complainant apply for the installation of a telephone in her residence to be used by herself and family for ordinary purposes, she would be entitled to such service at the rates prescribed for residences, regardless of the fact that her husband maintained his office in the same building, but said rate should only be extended to complainant's wife so long as the use of said telephone was entirely for ordinary residence purposes and not for her husband's use for professional business.

OPINION.

The complainant alleges that he has repeatedly requested the defendant telephone company to install a telephone in his residence, and that the defendant has refused except the complainant pay for such service requested the regular rate

for business service. Complainant further alleges that he has his office in certain rooms of his residence, * * * that he does not care for a telephone to be used in his business, and does not want one for that purpose; that his wife is the owner of the residence and has repeatedly asked for a telephone in the residence portion of their home for use solely as other residence telephones are used, and that she has been denied such service, except she pay the business rate, and prays for prompt relief.

To the complaint, the defendant company filed its answer, alleging in substance that it has a rule which is as follows:

"Any subscriber who maintains an office or place of business in his residence, or in room adjacent to, or opening into his residence, and maintains one telephone of this company therein which he uses for all purposes, shall pay the regular business rate for said telephone."

and that if it would install a telephone in the family residence of the complainant in the name of his wife at the schedule rate for service for residential purposes, the complainant would nevertheless use same for professional communications and thereby the company would be discriminating between the complainant and other subscribers now paying the business rate for service similar to that requested by the complainant, and therefore asks that the complaint be dismissed.

Section 614-18, General Code of Ohio, provides as follows:

"No public utility shall charge, demand, exact, receive or collect a different rate, rental, toll or charge for any service rendered, or to be rendered, than that applicable to such service as specified in its schedule filed with the Commission and in effect at the time. Nor shall any utility * * * extend to any person, firm or corporation, any rule, regulation, privilege or facility, except such as are specified in such schedule and *regularly and uniformly* extended to *all persons*, firms and corporations under like circumstances for the like, or *substantially similar*, service."

Among the evils which the law above referred to was designed to remedy, were discriminations between individual patrons in the matter of charges and services. It was re-

garded as most unjust and unreasonable to charge one individual more than another for the same kind of service under like circumstances, and it has been held repeatedly by other Commissions that a classification in telephone service must avoid unjust discrimination between subscribers, and this Commission so holds.

The complainant testified in the hearing of this case, that he did not want the telephone installed for his own use, but in an upper room, and in his wife's name, and for residential purposes for the family only, but also stated under oath that if the telephone was installed in his wife's residence, in her name, at the rate for residence telephones, should any person or persons call him over said telephone, he would answer them although the conversations may relate to his professional services or business. He also testified that he does not make any professional calls, but practices only in his office.

The Commission is not called upon in the case at bar to decide upon the reasonableness of the rule of the defendant company in classifying the use of telephones and the charges for the same where the applicant or subscriber maintains an office or place of business in his residence, as the complainant, by his own testimony, clearly shows that he does not want the telephone in his name, nor does he desire to use it for his professional business, but asked that the defendant be compelled to install a telephone in his wife's name at residential rates, and the wife of the complainant not being a party to these proceedings, the complaint will be dismissed.

Nevertheless, the Commission is of the opinion that should the wife of the complainant apply to the defendant company for the installation of a telephone in her residence, to be used by herself and family for ordinary purposes, that she would be entitled to such service at the rates prescribed in the company's schedule for residences regardless of the fact that her husband, the complainant, maintains his office in the same building, but said rate should only be extended to complainant's wife so long as the use of said telephone is

absolutely for such purposes as herein indicated and not for her husband's use for professional business, and should the complainant use the telephone for professional communications, the defendant company shall have the right to charge the business rate therefor or disconnect the same.

ENTRY OF DISMISSAL.

This matter came on to be heard upon the pleadings and the evidence, and was argued by counsel, and it appearing that the complainant is not the party in interest for whom relief is sought,

It is ordered, That this case be, and it hereby is, dismissed.

Dated at Columbus, Ohio, this thirteenth day of May, 1915.

IN THE MATTER OF THE APPLICATION OF THE MARION COUNTY TELEPHONE COMPANY TO BORROW MONEY AND ISSUE ITS NOTES THEREFOR TO PAY FOR THE CONSTRUCTION OF THE BUILDING AT MARION, OHIO, FOR THE USE OF SAID TELEPHONE COMPANY.

No. 514.

Decided May 26, 1915.

Issue of Notes for Six Months Period Need Not be Approved by Commission, Although Utility Intends to Renew Notes Indefinitely.

INFORMAL RULING.

We are in receipt of your favor in reference to application to borrow money for the purpose of constructing a building for the use of The Marion County Telephone Company, in which you state that if the money is borrowed for less than twelve months the application is needless, and if the money is wanted for a longer period the time should be stated.

It is the intention to borrow this money at the banks at Marion, and it is the rule of the banks here not to exceed six months. It is the intention of the company to borrow the

money on six months' time and then renew the notes from time to time for six months until the whole sum is paid, paying off the notes as rapidly as the income of the company will permit. It is probable that under that condition, it is not necessary to make the application to the Commission, but we felt that, being a public utility, we preferred to make the application so that the Commission might know and understand what the company was doing and that the company desired to keep within the bounds of the law and observe the same strictly. For this reason it would be difficult for us to put in any other form of application than the one that we have already filed.

If you will please advise us, we will, of course, make the application conform to your rules. We understand quite well that if the money were borrowed for a less term than twelve months, it was unnecessary to file an application with the Commission, but were somewhat fearful, knowing that it would be necessary to renew the notes from time to time, and that some of them would probably run, being extended from time to time, for three or four years. The company knowing this fact before hand, thought it best to make the application and explain to the Commission exactly how we desired to handle the matter.*

* * * * *

Your letter of May twenty-first has been received and the Commission, after carefully considering the same, feels that this is a matter which should not be brought before it, but one in which you have full power to act without any consent of this body. There could be nothing gained by getting the permission of the Utilities Commission to do the things which you state in your letter you are going to do.

The Commission appreciates your feeling that you desire to acquaint it fully with your affairs and would suggest that in borrowing this money you keep a full and complete record of the sums borrowed and the purposes

* Letter of Cressinger, Guthery and Stutz to The Public Utilities Commission, May 21, 1915.

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for which they are used, and it will then be a very simple matter in securing permission from the Commission in the future to capitalize these amounts.

Unless we hear from you to the contrary, we will dismiss† the application filed heretofore and allow the matter to be conducted in the usual way.‡

† Entry of Dismissal made May 29, 1915.

‡ Letter of The Public Utilities Commission to Frederick E. Guthery. May 26, 1915.

OREGON.

Railroad Commission.

IN THE MATTER OF THE APPLICATION OF THE WESTERN TELEPHONE COMPANY, CLYDE E. CARLOS, OWNER, FOR AUTHORITY TO CHANGE ITS RATES FOR TELEPHONE SERVICE IN TOWN OF HUBBARD, OREGON.

U-F-123.

Decided March 18, 1915.

Increase in Rates Upon Establishment of Continuous Service Authorized.

APPEARANCES:

Clyde E. Carlos, manager and owner, for applicant.

G. W. Knight, J. B. Mishler, A. J. Strubhar, A. Christian, George Beck and Dr. S. W. Weaver, subscribers to the Western Telephone Company.

ORDER.

On this eighteenth day of March, 1915, this matter comes on for final determination, having been heretofore fully submitted to the Commission upon the application of the Western Telephone Company, brought under the provisions of Section 77 of Chapter 279 of the General Laws of Oregon for the year 1911, for authority to increase certain of its rates. Notice of the hearing was served upon the city of Hubbard and given generally through the local papers.

Public hearing was held thereon in accordance with such notice and statements relative to the application received and duly recorded. The matter having been fully submitted, from the record before it,

The Commission finds:

1. Applicant, Western Telephone Company, a corporation of the State of Oregon, is a public utility, operating a plant and equipment for the transmission of telephone messages in the city of Hubbard and vicinity.

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2. That the applicant at present gives to the subscribers of the Hubbard exchange telephone service between the hours of 7:00 A. M. and 9:00 P. M. on week days, and 7:00 A. M. and 8 P. M. on Sundays.

3. The applicant's present schedule of rates is:

Business, one-party (wall or desk instrument).....	\$1 00 per month
Business, party line (wall or desk instrument).....	75 per month
Residence, one-party (wall or desk instrument).....	1 00 per month
Residence, party line (wall or desk instrument).....	75 per month
Farmer line switching (subscriber owns line and equipment to city limits).....	25 per month

The applicant's schedule of rates is inadequate and insufficient and is below the normal basis of rates charged by other telephone utilities under similar conditions in the Pacific Northwest.

4. The following net rates are fixed and determined as reasonable for the service performed by the applicant, and which will not exceed the value of the service to the patrons of the applicant:

Business, one-party	\$2 00 per month*
Business, two-party	1 75 per month*
Business, four-party	1 50 per month*
Residence, one-party	1 75 per month*
Residence, two-party	1 50 per month*
Residence, four-party	1 25 per month*
Residence, eight-party	1 00 per month*
Business, ten-party suburban.....	1 50 per month†
Residence, ten-party suburban.....	1 00 per month†
Farmer party line (subscriber owns equipment and line to city limits).....	6 00 per year
Extension bell only.....	15 per month
Extension telephone (including bell).....	50 per month
Extension telephone (without bell).....	35 per month

All monthly bills payable in advance before the tenth day of the month.

Farmer line bills (yearly rate) payable annually in advance during the first month of the period.

Subscribers failing to make payment as above may be denied service until settlement is made.

* Portable desk telephone 25 cents per month additional.

† Wall telephones only.

5. The applicant, upon request of subscribers to its service, has expressed its intention to extend the Hubbard exchange service to a twenty-four hour service, and the rates herein set forth are predicated upon such extended service.

A reasonable time for this order to take effect is April 1, 1915.

It is therefore ordered, considered and determined, That the applicant be authorized to charge and collect the rates herein found to be reasonable, in lieu of its present rates. This order shall be in full force and effect April 1, 1915. A copy of this order shall be immediately served upon the applicant and the city of Hubbard, Oregon, and prior to the date same becomes effective applicant shall publish and file with the Commission a new schedule in lieu of its existing schedule, embodying the rates herein prescribed.

Dated at Salem, Oregon, this eighteenth day of March, 1915.

IN THE MATTER OF THE OREGON-WASHINGTON TELEPHONE
COMPANY FOR AUTHORITY TO INCREASE RATES.

No. U-F-126.

Decided April 24, 1915.

**Increase in Rates Authorized — Discount for Prompt Payment Equal to
Authorized Increase Approved.**

ORDER.

The applicant is a telephone utility which operates in the city of Hood River and Hood River Valley. It also operates in certain portions of the State of Washington across the Columbia River from the Hood River Valley. This application is brought for the purpose of making a horizontal increase of 25 cents per month in all classes of rates maintained by the company for service within this State upon the understanding that a discount of 25 cents will be allowed from the increased rates if the subscriber's account

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is paid in full on or before the tenth day of the month for which the service is billed. By the terms of the tariff all monthly service rates are payable in advance. At the present time no discounts are allowed and no penalty is imposed for failure to pay bills promptly. The net effect of the increase applied for would be to add a penalty of 25 cents per month for the delinquency of subscribers. The application is concurred in by all subscribers from whom the Commission has been able to hear on the subject. On principle, the utility is entitled to make rules providing a reasonable penalty for failure to pay bills by a time specified. Such a practice is merely a revised way of stating a discount for prompt payment. The amount of penalty or discount in either case should bear a fair relation to the net amount of the bill and the extra cost to the utility entailed by the failure to make prompt payment.

The penalty or discount should be in this case approximately 10 per cent. of the net bill, with enough added to avoid fractions and make the cents end with 0 or 5, with 25 cents as a maximum. The gross bill, discount for payment of the current bill by the tenth of the month for which rendered, and net bill will therefore be the following:

	<i>Gross Bill</i>	<i>Discount</i>	<i>Net Bill</i>
Main line business.....	\$3 50	\$0 25	\$3 25
Party line business.....	2 50	25	2 25
Main line residence.....	2 50	25	2 25
Party line residence.....	1 65	15	1 50
Ministerial rate, party line residence....	1 10	10	1 00

In each case the net bill above specified is the present rate.

It is, therefore, ordered, That, as herein modified, the application be granted, effective with bills for the month commencing May 1, 1915, and that a copy of this order be transmitted by the utility to each customer affected with the first bill for service rendered under this authority.

Dated Salem, Oregon, April 24, 1915.

SOUTH DAKOTA.

Board of Railroad Commissioners.

IN THE MATTER OF THE INVESTIGATION INTO RATES, CHARGES AND PRACTICES OF THE SOCIAL TELEPHONE COMPANY.

F-99

F-155

Decided April 28, 1915.

Irregular Practices of Telephone Companies Investigated.

Upon its own initiative the Commission investigated the practices of the Social Telephone Company.

Filing of Contracts Ordered.

Held: That all contracts in any way affecting the conduct of the telephone business must be in writing and that copies of all such contracts and of all rates, franchises and ordinances must be filed with the Commission.

Discrimination in Favor of Stockholders Prohibited.

Held: That the practice of favoring stockholders by charging them lower rates than non-stockholders is unjustly discriminatory and contrary to the statute.

Discrimination in Favor of Subscribers Owning Equipment Condemned.

Held: That the practice of permitting subscribers, whether stockholders or not, to purchase equipment and thereby secure service at a less or different rate than that charged for the same class of service generally, is bad telephone practice; that any equipment now owned by individual subscribers should be taken over by the company and reasonable compensation paid therefor, and each subscriber should be required to pay the regular rental charge for each instrument installed for his use.

Graduated System of Non-Subscribers' Rates Recommended.

Held: That the practice of charging a 25 cent non-subscriber rate may be reasonable for the longer distance messages, but is excessive for the shorter haul messages; that a graduated schedule of non-subscriber rates should be filed,

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That where non-subscribers' messages are sent over the lines of different companies, each company should account to the other for money received from this source.

Increase in Rates Authorized.

The Social Telephone Company, after the commencement of these proceedings, had made application to the Board for permission to change its schedule rates, with a view to eliminating the discrimination that had existed between stockholders and non-stockholders. The Commission considered the probable operating revenues and expenses under the rates suggested and also compared the proposed rates with those charged by other companies operating under similar conditions. It then prescribed a reasonable schedule of rates.

7 Per Cent. on Reproduction Cost New Allowed as Reserve for Depreciation and 7 Per Cent. on Present Value as Rate of Return in Computing Operating Expenses.

In computing probable revenues and expenses under the proposed rates, the Commission allowed 7 per cent. of the estimated reproduction value as a reserve for depreciation and 7 per cent. of the present value as a rate of return.

Free Service in Railroad Station Ordered Discontinued.

Held: That the furnishing of free service in railroad stations is prohibited by the anti-pass law and by the telephone law and must be discontinued.

Message Basis for Interexchange Service Ordered.

Held: That messages between the subscribers of one exchange unit and the subscribers of a second exchange unit must be on a message or toll basis and transmitted over a blank or toll line having no telephones attached.

Amount of Terminal Fees Limited.

Held: That rural telephone lines operated by local exchanges on a switching basis, together with a local exchange, constitute a single unit for telephone service and in the delivery and transmission of toll messages, the 5 cent terminal fee on all incoming and outgoing messages applies as a compensation for all of the service rendered within the unit.

Failure to Classify Service Ordered Explained.

Held: That the Langford Telephone Company should be required to furnish the Board information as to why it has failed to classify its service and establish a different rental charge for business telephones than for residence telephones.

FINDINGS AND CONCLUSIONS.

By the Board.

Pursuant to notice duly served, hearing in this matter was held in the courtroom in Britton, South Dakota, on April 21, 1914, before Commissioners Robinson and Smith.

The Social Telephone Company appeared by *Mr. D. G. Stokes*, its president.

The Langford Telephone Company appeared by *Mr. H. P. Holcomb*, its secretary.

From the record it appears that the Social Telephone Company is incorporated with a capital stock of \$35,000; that it has 465 stockholders and operates exchanges in Britton, Newark, Kidder, Claremont and Hecla, and rural lines radiating from each of said exchanges, and connects with other companies at several points. The exchange at Claremont is owned and operated jointly with the Groton-Ferney Telephone Company. The Langford Telephone Company owns and operates an exchange at Langford and connects with the Social Telephone Company at Britton and with the Pierpont Telephone Company at Pierpont. It also has a connection with the Groton-Ferney Telephone Company and the Social Telephone Company at Claremont.

The record also shows that there are no contracts covering the connecting arrangements with these different companies. In the decision* of August 21, 1913, a copy of which was served upon the interested companies, it was held that our statute requires all rates of every kind and all contracts, agreements and franchises to be filed in the office of the Board of Railroad Commissioners. The contracts are to be filed as required by the statute and they must be in writing or it will be impossible to file them. It follows as a consequence that all agreements and contracts of every kind between telephone companies and every person, firm or corporation or municipality in any manner affecting the conduct of the telephone business must be in

* See Commission Leaflet No. 22, p. 974.

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writing and filed. A failure to comply with the provisions of the section requiring these filings subjects any telephone company and any officer or agent of any telephone company violating, neglecting, failing or refusing to make such filing, to a fine of not less than \$200 nor more than \$1,000.

The rental rates charged by the Social Telephone Company for the different classes of service are as follows:

Business rate	\$1 50
Residence rate	1 00
Stockholders rate, any service.....	75

and where a stockholder paid rent for one telephone and then desired the service of the second telephone, he could secure same by the purchase of an instrument and paying for the installation of the same.

This Commission has repeatedly held that telephone companies must make the same rates to all subscribers for the same class of service, and that they are forbidden by law to make different rates for stockholders and for persons who are not stockholders. The mere statement of the present schedule of rates shows that the company has been violating the law and is guilty of unjust discrimination, inasmuch as they have favored their stockholders by lower rates than are charged to those who are not stockholders, and that the practice is clearly violative of the provisions of Section 10, Chapter 289, Laws of 1909, as amended by Chapter 218 of the Laws of 1911. In connection herewith the practice of the company in permitting its subscribers, whether stockholders or not, to purchase certain equipment and thereby secure service at a less or different rate than that charged for the same class of service generally, has been held to be bad telephone practice and the company should desist therefrom immediately upon the service of the order in this case. Any equipment now owned by individual subscribers should be taken over by the company and reasonable compensation paid therefor, and each subscriber be required to pay the regular rental charge for each of the telephone instruments installed for his use.

The record shows that different companies operating in this territory have a 25 cents non-subscriber rate, the company originating the message collecting and retaining the entire charge. It is our conclusion that while this 25 cents rate may be a reasonable charge for the longer distances covered by the different companies, that it is an excessive charge for the shorter haul messages, and the interested companies should cause to be filed with the Board a graduated schedule of non-subscriber rates which would more equitably cover the situation, and each company should account to the other for the money received from this source.

After the commencement of these proceedings, the company made application to the Board for permission to change its schedule of rates with a view of eliminating the discrimination that had existed between stockholders and non-stockholders and requested permission to put into effect the following schedule of rates:

Main line business rate.....	\$1 50
Party line business rate.....	1 25
Main line residence rate.....	1 50
Party line residence rate.....	1 25
Rural rates	1 25

Except at the exchange in Hecla, where the rates were to be:

Main line business rate.....	\$1 50
Party line business rate.....	1 00
Residence rate	1 00

Hearings were held on this application on December 2, and December 21, 1914, at Britton, South Dakota, when statements showing receipts and disbursements from November 1, 1913, to November 1, 1914, were submitted and an inventory of the property of the company was filed. From the information contained therein and a careful comparison of the rates charged by other like companies, it is our conclusion, and we so find, that the following would be

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a reasonable schedule of rates, and that the application of the Social Telephone Company be granted as modified herein, and the company be ordered to put such schedule of rates into effect May 1, 1915.

Main line business, per month per 'phone.....	\$1 50
Party line business, per month per 'phone.....	1 25
Main line residence, per month per 'phone.....	1 25
Party line residence, per month per 'phone.....	1 00
Rural party line, per month per 'phone.....	1 25, or
Rural party line, per year per 'phone.....	15 00

and that the company be authorized to put into effect as of same date at its exchange in Hecla, the following schedule of rates:

Main line business, per month per 'phone.....	\$1 50
Party line business per month per 'phone.....	1 00
Residence, per month per 'phone.....	1 00

The schedule authorized for the exchange in Hecla to remain in effect until such time as an investigation may be had of the conditions existing in that exchange.

While the accounts of this company are very incomplete, the information was obtained that it maintains a total of 574 telephones, more particularly as follows:

10 main line business telephones
 109 party line business telephones
 8 main line residence telephones
 152 party line residence telephones
 295 rural party line telephones.

Applying the proposed rates to the different classes of service as previously indicated and including \$400.56, the amount as given by the company for toll receipts, would make the annual receipts of the company \$8,530.56. Taking the company's statement of the actual annual expenses at \$4,889.93, and allowing \$200 for maintenance, \$100 for poor accounts and \$200 for miscellaneous expense, figuring depreciation at 7 per cent. of the estimated reproduction value of \$25,000, and interest at 7 per cent. on the present value

of \$20,000, the total expense of \$8,539.93, is computed, which would leave a deficit of \$9.37.

It is a matter of record in this case that the telephone company is furnishing the railway company with its telephone in the depot free of charge. While it is true that this service is an accommodation to the patrons of the defendant telephone company, the anti-pass law of this State absolutely prohibits furnishing free telephone instruments and free telephone service, and it is also prohibited by the plain terms of the telephone law. As a consequence, the same rates must be charged the railway company and its employees as are charged other subscribers for the same class of service.

At the hearing, the management of the Social Telephone Company requested that they be informed as to what rates should apply between subscribers of the Langford Telephone Company at its exchange in Langford and the subscribers of the Social Telephone Company at its exchange in Britton, particularly as to whether the regular toll rate should be imposed or a flat rate at so much per telephone per month be established. In answering this question, it is deemed sufficient to quote from the language used in the decision* of August 21, 1913, before referred to:

"As heretofore stated in the course of this decision, this Commission is of the opinion that each telephone exchange and all lines operated by it in connection therewith, as well as all lines connected with it on a switching basis, constitute a unit for telephone service. All telephone subscribers connected with this local exchange are, under the arrangements provided for by our statute, permitted to freely interchange communication through the medium of a local exchange. In other words, all subscribers are permitted to converse with all other subscribers to a local exchange upon the payment of their telephone rent, and, in case of the connecting companies, of the switching fees provided by law. Rural telephone companies not operated by the local exchange are, under our statute, upon being connected with the local exchange, and payment of the switching fee made a part of such exchange, so that the patrons of such connecting rural lines are permitted to talk without any additional charge to all their patrons connected with the local exchange, and all other patrons who are sub-

* See Commission Leaflet No. 22, p. 974.

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scribers of or connected with the local exchange are permitted to talk to the subscribers of such connecting rural line without the exacting of any additional charge. In other words, a local exchange and all of its connecting lines, whether owned and operated by it or connected with it on a switching basis, constitute a telephone unit and are permitted to talk with each other without any extra charge."

From the foregoing, it will be noted that rural lines having connection with an exchange upon a switching basis are permitted to interchange messages with the subscribers of the exchange with which they are connected. Messages between the subscribers of one exchange unit and the subscribers of the second exchange unit, it necessarily follows must be on a message or toll basis and transmitted over a blank or toll line having no telephones attached.

Another question propounded by the company was as follows: Will the company be permitted to make an added line charge where a non-subscriber originates a long distance or toll message at a rural farm line telephone several miles distant from the exchange? In this connection, it has been decided by the Commission in former cases that an added line charge for either originating or terminating a message shall not be permitted. Section 6 of the telephone law provides that all terminal fees for all incoming and outgoing messages shall not exceed 5 cents for any message originating or terminating in South Dakota, unless otherwise ordered by the Board of Railroad Commissioners, and up to this time no order has been issued by the Board disturbing the 5 cents terminal fee fixed by statute. The law contemplates that there shall be allowed in the exchange, where the toll message originates, a terminal fee of 5 cents and to the exchange where the message terminates another terminal fee of 5 cents and these two terminal fees are included within the toll charge. This fee having been fixed by the legislature, it is presumed to be reasonable and to afford compensation for all of the services in connection with the toll message, both at the originating and terminating exchange, as well as for the service of delivering a toll message over a line owned by it, or one connected with it on

a switching basis. We have a statute in this State authorizing rural telephone lines to become, by connection on a switching basis, a part of a local exchange, and it is our opinion that rural telephone lines operated by local exchanges on a switching basis, together with a local exchange, constitute, as stated before, a single unit for telephone service, and that in the delivery and transmission of toll messages a 5 cents terminal fee on all incoming and outgoing messages applies as a compensation for all of the service rendered within the unit.

While the Langford Telephone Company is not directly a party to this case, they appeared at the hearing and it is a matter of record that it, as well as the Social Telephone Company, has failed to cause to be put in writing all contracts and agreements with connecting companies; that it further appears that both of these companies extend interchange of service with different companies free of charge and that the Langford Telephone Company charges \$1.00 a month per telephone, regardless of the class of service furnished. In other words, it does not make any distinction between business and residence service. It is our conclusion that these companies should be ordered to enter into written contracts with the different companies with which either of them has connecting arrangements and cause to be filed with this Board within thirty days certified copies of such contracts. Such contracts should give in detail the exact situations covered and thereby all terms and conditions applying thereto. The Langford Telephone Company should also be required to furnish the Board, within thirty days, information as to why it has failed to classify its service and establish a different rental charge for business telephones than for residence telephones.

ORDER.

In this case, the Board having made a full and complete investigation, and on this date filed its decision containing its findings and conclusions, and being fully advised in the premises:

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It is ordered, considered and adjudged, That the Social Telephone Company be, and hereby is, authorized to adopt and put into effect a schedule of telephone rates to become effective May 1, 1915, as follows:

Main line business per month per 'phone.....	\$1 50
Party line business per month per 'phone.....	1 25
Main line residence per month per 'phone.....	1 25
Party line residence per month per 'phone.....	1 00
Rural party line per month per 'phone.....	1 25, or
Rural party line per year, per 'phone.....	15 00

This schedule of rates to apply to all its subscribers except those at its exchange in Hecla, and that the company is authorized to put into effect as of the same date at its exchange in Hecla, the following schedule of rates:

Main line business per month per 'phone.....	\$1 50
Party line business per month per 'phone.....	1 00
Residence, per month per 'phone.....	1 00

The schedule authorized for the exchange in Hecla shall remain in effect until such time as an investigation may be had of the conditions existing in that exchange.

It is further ordered, considered and adjudged, That the Social Telephone Company and the Langford Telephone Company be, and hereby are, required to enter into written contracts with the different companies with which either of them has connecting arrangements, and that certified copies of such contracts be filed with this Board within thirty days of the date hereof, such contracts to give in detail the exact stations covered thereby and all terms and conditions applying thereto.

It is further ordered, That the Social Telephone Company desist from the practice of permitting its subscribers, whether stockholders or not, from purchasing and owning part of the equipment used in the conduct of its business. Further, that the company be, and hereby is, required to charge and collect from each of its subscribers the regular schedule of rates for each and every telephone instrument installed by it.

It is further ordered, considered and adjudged, That the Social Telephone Company be, and hereby is, required to charge and collect for its telephone installed in the depot at Britton its regular rental rate for the same class of service as is charged to its other subscribers.

It is further ordered, considered and adjudged, That the Langford Telephone Company be and hereby is required to furnish to this Board within thirty days from the date hereof information as to why it has failed to classify its services and failed to establish a different rental charge for business telephones than for residence telephones.

Done in regular session, at Pierre, the capital, this twenty-eighth day of April, A. D. 1915.

MISSOURI VALLEY TELEPHONE COMPANY *v.* DAKOTA CENTRAL
TELEPHONE COMPANY.

F — 94.

Decided April 29, 1915.

**Physical Connection for Toll Service Ordered — Connection at Points
Having Competing Exchanges Refused.**

Complainant sought the establishment of physical connection between its telephone system and that of the defendant at Pollock, Herried, Mound City, Glenham and Mobridge.

The defendant had been operating a telephone system in this territory without competition, but because of dissatisfaction with the defendant's rates, the Missouri Valley company had been organized to operate in the same locality. The Missouri Valley company now sought to afford its subscribers long distance service, and for this purpose asked for connection with the lines of the defendant in Pollock, Herried, Mound City, Glenham and Mobridge. In all of these places, except Mound City, both companies were operating competing exchanges, but at Mound City only the Missouri Valley company had an exchange, the Dakota Central company having merely a toll station. As the complainant was a local concern, with local prestige, and as its rates at Mobridge were lower than those of the defendant, it was probable that if it were granted connection with each of the exchanges of the defendant at Pollock, Herried, Glenham and Mobridge, all of the subscribers of the defendant at these exchanges would ultimately become subscribers of the complainant.

Held: That the patrons of the Missouri Valley Telephone Company should be accorded an opportunity to transmit and receive long distance or toll messages at their telephone instruments located in their respective places of residence or business,

That it is also the duty of the Board to protect the property of the defendant;

That if connection be made between the exchange of the complainant at Mound City and the lines of the defendant in the same place the least injury will be done to the defendant, and yet the patrons of the complainant will be accorded full opportunity for the transmission and receipt of long distance or toll messages.

Ordered, That the lines of the Dakota Central Telephone Company at Mound City be connected with the exchange of the Missouri Valley Telephone Company at the expense of the Missouri Valley company, and that all expenses of maintenance of such connection be borne by the said Missouri Valley company;

That upon the completion of the connection, patrons of the Missouri Valley company shall be accorded the opportunity of transmitting and receiving over their own telephone instruments long distance or toll messages over or from the lines of the Dakota Central Telephone Company at the regular established toll rates;

That all charges for toll messages originating on the lines of the complainant (messages which are reversed to be considered as originating at the station where delivered) shall be guaranteed by the complainant to the defendant and collected, accounted for and paid over by said complainant to the defendant monthly.

FINDINGS AND CONCLUSIONS.

By the Board:

In this proceeding, the complaint alleges that the complainant is a corporation and owns and operates a telephone line and exchanges in Pollock, Herried, Mound City, Glenham and Mobridge, in Campbell County in this State, together with rural telephone lines radiating from such exchanges into the rural districts or farming communities adjacent to such towns, but is not what is commonly known as a long distance telephone line. That the defendant, among other things, is engaged in the telephone business and owns and operates a telephone exchange in each of these cities and also owns and operates a long distance telephone line connecting its exchanges with other cities or towns on its lines in this State. That complainant has frequently de-

manded connection for toll service and such connection has been refused.

The hearing in this case was held at Glenham, all the members of the Board being present.

The complainant was represented by its secretary, *Mr. M. I. Larson* and by *Mr. Chris Salszeidler*, *Mr. Joseph Peterson*, *Mr. N. I. Amundson* and *Mr. Rudolph Kluckman*, directors.

The defendant was represented by *Mr. W. G. Bickelhaupt*, its secretary.

It appears from the evidence in this case that the Dakota Central Telephone Company was the pioneer in the field and the Missouri Valley Telephone Company was organized because of some dissatisfaction with the rates for services charged by the Dakota Central Telephone Company. The complainant originated at Mound City, where it has its principal office and place of business and its lines radiate from Mound City to Herried, Pollock, Glenham and Mobridge.

It also appears to the satisfaction of the Board that the Dakota Central Telephone Company owns and operates a telephone system in this locality, having an exchange at Herried, Glenham, Pollock and Mobridge, but a toll station merely at Mound City. From Mound City the lines of the defendant extend in four directions: north and west, east, south and east, and south and west.

The only connection desired by the complainant is that which will enable it to afford to its subscribers long distance or toll service, and while it asks for connection at each one of these exchanges, five connections in all, it clearly appears to the Board that it may not grant all of these five connections without almost irreparable injury to defendant's business for reasons which will hereafter appear.

At Mound City, as previously stated, the Dakota Central Telephone Company has a toll station only, while complainant, the Missouri Valley Telephone Company, has at that point 8 business subscribers, 10 residence subscribers and about 50 rural subscribers. Of the five exchanges, this is

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the only one where there is no actual competition between the complainant and defendant in local exchange service. At Herried, Pollock, Glenham and Mobridge, both companies operate local exchanges. The complainant being a local concern, organized by the citizens residing within Campbell county, has a local prestige which, if it were granted connection with each of the exchanges of the defendant at Pollock, Herried, Glenham and Mobridge, would result in the destruction of the property of the defendant at these stations, in that all subscribers to the defendant at these exchanges would ultimately become subscribers of the complainant, because of the local prestige or local influence of the home company, as well as of its officers and stockholders. Again, at Mobridge, the rates of the complainant are not on the same basis as are those of the defendant and while it does not at this time maintain at Mobridge what might be called an exchange, it is a fact that complainant has some subscribers at Mobridge and if it were granted connection at that point with the exchange of the defendant, on account of the lower rates in effect on the complainant's lines, the result would be to cause the subscribers of the defendant to become patrons of the complainant and discontinue the use of the telephones of the defendant at Mobridge, which would practically result in the destruction of defendant's property. The rates established and now being charged by the defendant at Mobridge, have been approved by this Board. The people of Mobridge, prior to the establishment of the present plant of the defendant in that city, were very much dissatisfied with the telephone service furnished by it, and complained to the Board that because of humming and buzzing of the wires and the cross-talk occurring on its lines, the local exchange was unfit for telephone communication, was unfit to render proper telephone service. After several investigations and experiments, this Board ordered the defendant to establish in Mobridge a metallic circuit system, and after that metallic circuit system was constructed and put into operation, approved the new rates now in effect on its exchange.

The telephone plant of the complainant is a grounded telephone system.

In the case of *Arena and Ridgeway Telephone Company v. Mazomanie Telephone Company*, Commission Leaflet No. 37, page 505, the Wisconsin Railroad Commission held:

"The fact that the Arena company has a rate of \$10.00 per year for rural service in competitive territory where the Mazomanie net rate is \$12.00 per year would give the Arena company a competitive advantage, if both companies offered the same extent of service, which might very easily result in the loss by the Mazomanie company of all of its subscribers in competitive territory, or of so many of them that remaining subscribers could be served only at a heavy loss. This would be especially likely, if as intimated at the hearing, the Arena company, as a whole, were to bear the expense of physical connection. If the rate were to be very large, the Arena company might have to increase its general rate, but unless such increase were at least to the level of the Mazomanie rate and unless it were made prior to securing connection, the Mazomanie company in the meantime would be subjected to competition which could hardly fail to be destructive."

In that case, it appeared that while the complainant desired connection with the defendant, it also appeared that there was a difference of \$2.00 per year in the rates between the two companies and the Wisconsin Commission refused to make the connection until the rates were equalized.

In the case of *Home Independent Telephone Company v. Eastern Oregon Co-operative Telephone Association*, Commission Leaflet No. 29, page 937, it appeared that the applicant for telephone communication was engaged in the telephone business at three exchanges in competition with the defendant with whom it desired connection for toll purposes, and while the order passed by the Oregon Railroad Commission granted connection for the transmission of toll messages, it did so upon the condition which was a condition precedent that the applicant for the connection withdraw from the local exchange business at the points where it was in open competition with the company with which it desired connection.

While in the case before us, we believe and find that the patrons of the Missouri Valley Telephone Company should

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be accorded an opportunity to transmit and receive long distance or toll messages at their telephone instruments located in their respective places of residence and business, it is still the duty of this Board to protect the property of the defendant and under all of the circumstances in this case, we find that if connection is made between the telephone exchange of the complainant at Mound City and the lines of the defendant in the same place, the least injury will be done to the Dakota Central Telephone Company, and yet the patrons of the complainant will be accorded full opportunity for the transmission and receipt of long distance or toll messages. As previously stated, Mound City is happily located for this service. It is at the intersection of the lines of the Dakota Central Telephone Company radiating north and west, east, south and east, and south and west, so that from Mound City the patrons of the complainant may transmit messages in either direction.

The complainant will be required to guarantee the payment of all toll charges for messages originating on its lines and messages which are reversed will be considered as originating at the station or telephone instrument where delivered.

The Dakota Central Telephone Company will be entitled to charge, collect and receive for this service the same rates which it charges its own patrons for similar service, and the entire toll rate shall be payable to it and accounted for and paid over monthly by the complainant.

That for the purpose of transmission of long distance or toll messages, the lines of the defendant be connected directly with the switchboard at the exchange of the complainant and at the expense of the complainant.

ORDER.

In this case, the Board having made a full and complete investigation, and upon this date filed its findings and conclusions, and being fully advised in the premises:

It is ordered, considered and adjudged, That the lines of the Dakota Central Telephone Company at Mound City be

connected with the exchange of the Missouri Valley Telephone Company, at the expense of the Missouri Valley Telephone Company, and that all expense of maintenance of such connection be borne by the last named company.

That when such connection is completed, patrons of the complainant herein, the Missouri Valley Telephone Company, be accorded the opportunity of transmitting and receiving over their telephone instruments in their respective places of residence or business long distance or toll messages over and from the lines of the Dakota Central Telephone Company, the defendant, at the regular established toll rates.

That all charges for toll messages originating on the lines of the complainant (messages which are reversed will be considered as originating at the station where delivered) shall be guaranteed by the complainant to the defendant and collected, accounted for and paid over by said complainant to the defendant monthly.

Twenty days is considered a reasonable time within which to comply with this order.

Dated April 29, 1915.

IN THE MATTER OF AN INVESTIGATION INTO THE TELEPHONE FACILITIES AND TELEPHONE SERVICE FURNISHED IN CONNECTION THEREWITH BY THE DAKOTA CENTRAL TELEPHONE COMPANY TO THE CITIZENS OF THE CITIES OF PIERRE AND FORT PIERRE.

F-162.

Decided May 18, 1915.

Schedules of Exchange and Interexchange Rates Fixed.

The Commission made an investigation into the rates and service of the Dakota Central Telephone Company at Pierre and Fort Pierre.

The Dakota Central company was furnishing exchange service at both Pierre and Fort Pierre. Each exchange had its own schedule of rates for service within the exchange and in addition provision was made whereby the subscribers of either exchange might obtain, upon payment

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of an additional flat rate, the service of the other exchange. Although only those subscribers paying this additional charge were entitled to the service of the second exchange, nevertheless because of inadequate policing of the lines, all of the subscribers of each exchange, and even the public generally who were not subscribers, were able to secure service to and through the second exchange without payment of the additional charge.

Two methods of eliminating this unjust discrimination were possible: one, to require the telephone company to reconstruct its exchanges, install an additional switchboard in each, put on additional operators so as to police the messages and limit the service according to the rental paid; the other, to establish a new basis for rates at each exchange and a message rate for communication between the two exchanges.

The Commission, after considering the present operating expenses and revenues and the probable operating expenses and revenues under the system of charging a message rate for all messages between Pierre and Fort Pierre, fixed a separate schedule of rates for strictly local exchange service in each city and provided a toll rate of 5 cents per message for each call between these exchanges.

Discount for Prompt Payment Authorized.

Held: That the Dakota Central Telephone Company should be authorized to name a rate from which, if paid on or before the tenth day of the current month, a discount of 25 cents would be made.

FINDINGS AND CONCLUSIONS.

By the Board:

Because of several informal complaints made to this Board concerning the telephone rates charged and telephone service furnished in connection therewith at the cities of Pierre and Fort Pierre by the Dakota Central Telephone Company, and it appearing from the files in the office of the Board that the rates charged, according to the said complaint, were not the rates on file in its office, a resolution was adopted on the twenty-eighth day of December, 1914, assuming jurisdiction of an investigation into the telephone rates and telephone service of the company at the cities named. Two hearings were held both at the offices of the Board, one on January 7, 1915, and another on February 26, 1915. In addition to these hearings the telephone company made a count of the messages interchanged between these two exchanges for a period of seven days from and including March 8 to and including March 14.

The telephone plants and exchanges in the cities of Pierre and Fort Pierre were originally constructed by the Capital City Telephone Company, a corporation organized under the laws of this State. The date of the construction, as well as the date of the taking over of the plant by the Dakota Central Telephone Company, is unknown to the Commission. On December 9, 1909, the Dakota Central Telephone Company filed in the office of this Board its schedule of rates for the Pierre and Fort Pierre exchanges which reads as follows:

PIERRE, S. D.

Business rate, per month, including Fort Pierre.....	\$2 50
Business rate, per month.....	2 00
Residence rate, per month, main line.....	1 50
Residence rate, per month, two-party line.....	1 25
Residence rate, per month, party line.....	1 00

FORT PIERRE, S. D.

Business rate, including Pierre Exchange, per month.....	2 50
Business rate, per month.....	2 00
Residence rate, per month.....	1 00

In addition to the above rates the following charges are made for additional equipment:

Extension to business 'phone (complete set), per month.....	\$1 00
Extension to business 'phone (talking set only), per month....	50
Extra extension bells, per month.....	25
Desk sets, per month.....	25

Through some oversight, omission or inadvertence on the part of the managers of the exchanges located at Pierre and Fort Pierre, the rates actually charged, collected and received by the Dakota Central Telephone Company were as follows:

PIERRE, S. D.

Main line business 'phone, per month.....	\$2 50
Two-party line business 'phone, per month.....	2 00
Four-party line business 'phone, per month.....	1 50
Main line residence 'phone, per month.....	2 00
Two-party line residence 'phone, per month.....	1 50
Three-party line residence 'phone, per month.....	1 25
Four-party line residence 'phone, per month.....	1 00

FORT PIERRE, S. D.

Main line business 'phone, per month.....	\$2 50
Two-party line business 'phone, per month.....	2 00
Main line residence 'phone, per month.....	2 00
Two-party line residence 'phone, per month.....	1 50
Three-party line residence 'phone, per month.....	1 25
Four-party line residence 'phone, per month.....	1 00

In addition to these rates the regular charges for additional equipment in the way of extension sets and desk sets were charged subscribers receiving that class of service.

When these informal complaints were made to this Board, and before the passage of the resolution assuming jurisdiction of this investigation on December 28, 1914, the matter of the discrepancy between the rates filed and the rates charged by the telephone company was brought to its attention, and in order that proceedings looking to an investigation of the situation might be initiated, that company made new filings under date of December 9, 1914, for new telephone rate basis or a new scheme for telephone rates with telephone service for the cities of Pierre and Fort Pierre. There were two filings, one treating each exchange as a separate area, known as Rate Filing No. 1, and the other treating both exchanges as a single area, known as Rate Filing No. 2. These filings read as follows:

RATE FILING NO. 1.

Pierre Area:

Main line business.....	\$2 75 per month
Main line residence.....	1 75 per month
Party line residence.....	1 25 per month
Churches, schools, societies, etc.....	2 25 per month
Private branch exchange, trunk.....	2 75 per month

With a discount of 25 cents per month, if the current month's rental is paid at our office in Pierre, S. D., on or before the tenth of the month. Desk sets, 25 cents per month extra.

Fort Pierre Area:

Main line business.....	2 25 per month
Main line residence.....	1 75 per month
Party line residence.....	1 25 per month
Churches, societies, schools, etc.....	1 75 per month
Private branch exchange, trunk.....	2 25 per month

With a discount of 25 cents per month if the current month's rental is paid at our office in Fort Pierre on or before the tenth of the month. Desk sets 25 cents per month extra.

Toll rate between Pierre and Fort Pierre:

Three minutes	10
Each additional minute.....	03

RATE FILING NO. 2.

Pierre and Fort Pierre Area:

Main line business.....	3 25 per month
Main line residence.....	2 25 per month
Party line residence.....	1 50 per month
Churches, societies, schools, etc.....	2 75 per month
Private branch exchange, trunk.....	3 25 per month

With a discount of 25 cents per month, if the current month's rental is paid at our office in either Pierre or Fort Pierre, on or before the tenth of the month.

Desk sets 25 cents per month extra.

In the early history of the telephone business in the two cities, an arrangement was made between the officers of the Capital City Telephone Company and the authorities and merchants at Pierre and Fort Pierre for the interchange of messages between the two cities, and it was considered

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that this interchange of messages was necessary in connection with business houses. It was for this reason that the rates at the Fort Pierre and the Pierre exchanges contained a provision under which, for an additional charge of 50 cents per month the subscriber was permitted to have the privilege of the second exchange. There was an additional arrangement at the city of Fort Pierre between the telephone company and the merchants under which, for an additional charge of 50 cents, the patrons of the Fort Pierre merchants were permitted the privilege of the Pierre exchange, so that a merchant at Fort Pierre who paid \$2.50 was entitled to the privilege of the Fort Pierre exchange, and if he paid \$3.00 he was entitled to permit the patrons of his place of business to communicate with subscribers of the Pierre exchange. Subsequently an additional 50 cents was collected from the subscribers to the main line residence service, and although the rate filed for this service was \$1.50 the rate actually charged, collected and received was \$2.00, and this additional 50 cents was presumed to cover the telephone service at the second exchange. In actual practice, however, the service of the second exchange was not limited to the persons who were paying the additional compensation for this class of service, and in time it came to pass that the subscribers to both classes of service who were paying for two, three and four party line service were in full enjoyment of the privileges of the second exchange, although none of them were paying for this additional privilege.

It appears from the testimony in this case that it would be impossible to police the calls coming on to the switchboard in the Pierre and Fort Pierre exchanges in such a way as to limit the service of different subscribers according to the rentals paid without installing an additional switchboard in each exchange, which would necessitate additional operators. By installing additional switchboards in each exchange and connecting to one switchboard all subscribers who were paying for the service at the second exchange and to the other switchboard all subscribers who

were not paying for the second exchange, and installing operators at each switchboard, it would be possible to police the calls coming from the different telephone stations in the two cities. This, however, would entail a very great additional expense in the reconstruction of the plants and the operating expenses, and gradually the bars were let down so that all subscribers connected with both exchanges and the public generally, including those who were not subscribers, were freely intercommunicating between the two cities. In Pierre there were only 84 subscribers to business telephones and 17 subscribers to main line residence telephones, and at Fort Pierre there were 18 main line business subscribers and 3 main line residence subscribers, who were paying for this class of service. In other words, there were 101 subscribers out of 547 at the city of Pierre, and 21 subscribers out of 134 at the city of Fort Pierre, actually paying for the privilege of the second exchange, while 446 subscribers at Pierre and 113 subscribers at Fort Pierre were being accorded this service without any charge. We do not mean to say that all of these persons were actually obtaining the service, but that the record shows that they could have had it and that a great many of them did have it. It hardly requires the citation of authorities to show that under this situation there was a discrimination in favor of the persons who were not paying and against the persons who were paying for the service at the additional exchange.

Section 10 of our telephone law (Chapter 289, Session Laws of 1909, as amended by Chapter 218, Session Laws of 1911) reads as follows:

"Discrimination Unlawful.—No person or telephone company shall unjustly discriminate either between persons or telephone companies in the switching, transfer or delivery of messages; *nor shall such telephone company make different rates for its subscribers for the same class of service in any city or town where it is operating.* All such charges and rates shall be uniform to its subscribers for the same class of service. Any person or telephone company and any officer or agent of any telephone company violating any provision of this section shall, upon conviction thereof, be punished by a fine of not more than two hundred dollars."

Some method must be devised which will bring about uniformity in rates and eliminate discrimination. Two methods are presented by the record, one to require the telephone company to reconstruct its exchanges, install an additional switchboard in each, and put on additional operators so as to police the messages and limit the service according to the rental rate paid, or to establish a new basis for rates at both exchanges and a message rate for communication between them. The proximity of the cities has led to the present arrangement and the resulting discrimination. Those who obtain the free service do so at the expense of those who pay for it. It is elemental that the person who obtains the service should pay for it. Disregarding the question of proximity, there is no more reason for the interchange of messages between the two exchanges on the old basis than there would be for the interchange of messages on a similar basis between Huron and Sioux Falls — it is merely a question of distance. The theoretical and logical basis includes separate schedules of rates for the separate exchanges and a toll rate between the two. If this basis be adopted, it will be necessary to make some adjustments of the rates in consideration of the revenue which would accrue from the toll business between the two exchanges. There is no definite and positive method of calculating the additional revenue which would be received from a toll rate between the two exchanges. We have before us a check for seven days during the month of March, 1915, and if free service is discontinued between the two exchanges and a toll charge imposed, it is said this will reduce the number of calls. This is a matter of mere speculation at this time and only an actual test will furnish information on this point.

We have made a careful estimate of the present annual operating expenses at Pierre and Fort Pierre exchanges. We find these expenses to be approximately as follows:

PIERRE EXCHANGE.

Seven operators at \$30.00 per month.....	\$2,520 00
One operator at \$35.00 per month.....	420 00
Extra operator, \$10.00 per month.....	120 00
Taxes paid	1,300 00
Maintenance, 547 telephone stations at 60 cents.....	328 20
Light, heat, janitor, drayage, livery, directory and incidental expenses	600 00
Manager's salary, \$85.00 per month (4/5).....	816 00
Salary of line man at \$70.00 per month.....	} 960 00
Salary of assistant at \$30.00 per month (4/5).....	
TOTAL	\$7,064 20

FORT PIERRE EXCHANGE.

Taxes paid	\$188 58
Light, heat, rent and incidentals.....	144 00
Line man's salary (1/5) and assistant.....	240 00
Salary of manager (1/5).....	204 00
Maintenance, 135 'phones at 60 cents.....	81 00
Drayage and other incidentals.....	50 00
Two operators at \$30.00.....	} 960 00
One operator at \$20.00.....	
TOTAL	\$1,867 58

After a careful consideration of all the evidence in this case this Board is of the opinion and finds that the above operating expenses are approximately correct and that the only system or basis of rates which it may establish for the exchanges of Pierre and Fort Pierre and for intercommunication between the two exchanges must be on the basis of a separate schedule of rates for each exchange, with a toll rate for communication between the two exchanges. We also find that the 10 cents rate named in Rate Filing No. 1 is excessive, unreasonable and unjust, and that a rate of 5 cents for this service is a fair and reasonable rate, and the additional charge for all time over three minutes should not exceed 2 cents per minute.

As we have previously stated, the imposition of a toll charge between the two exchanges makes it necessary for

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this Board to adjust the rental rates and to make an estimate as to the possible revenue to be derived from the toll service. It already appears that we have before us a check of the messages for seven days in March, 1915. On the basis of this check, for the purposes of this decision, we have assumed that the toll messages passing under a toll rate would not exceed 50 per cent. of the toll messages passing under the present arrangement, and if this estimate be true the total revenue under the toll rate of 5 cents would amount to \$1,442 per annum. After considering the rates name in the rate filing made August 31, 1909, and the rates actually charged, and rate filings No. 1 and 2, we find that fair and reasonable schedules of monthly rental rates for the rental of telephone instruments and telephone service in connection therewith for the cities of Pierre and Fort Pierre are as follows:

At the city of Pierre:

Main line business rate.....	\$2 25
Two-party line business.....	1 75
Four-party line business.....	1 50
Main line residence.....	1 50
Two-party line residence.....	1 25
Four-party line residence.....	1 00
Churches, schools, societies, etc.....	1 50
Private branch exchange, trunk.....	2 25

At the city of Fort Pierre:

Main line business.....	2 00
Two-party line business.....	1 50
Main line residence.....	1 25
Two-party line residence.....	1 15
Four-party line residence.....	1 00
Churches, schools, societies, etc.....	1 50
Private branch exchange, trunk.....	2 90

That for additional equipment and services in connection therewith the reasonable monthly rental rates at both exchanges are as follows:

Extension to business 'phone (complete set), per month.....	\$1 00
Extension to business 'phone (talking set only), per month..	50
Extra extension bells, per month.....	25
Desk sets, per month.....	25

On the basis of these rates we have estimated the revenue to be derived at the exchanges as follows:

<i>At the city of Pierre:</i>	
Long distance toll receipts.....	\$655 00
Telephone rentals	8,514 00
Desk sets at 25 cents per month.....	168 00
Switching rural farm lines.....	124 50
One-half of tolls at 5 cents per message between Pierre and Fort Pierre	721 00
TOTAL	\$10,182 50
 <i>At the city of Fort Pierre:</i>	
Long distance toll receipts.....	\$250 00
Telephone rentals	1,956 60
Desk sets at 25 cents per month.....	54 00
Switching rural farm lines.....	66 00
One-half toll rates, 5 cents per message, between Pierre and Fort Pierre	721 00
TOTAL	\$3,047 60

By applying the estimated operating expenses at Pierre to the estimated revenue, we have a net operating revenue of \$3,118.30, and the same application of the estimated operating expenses at Fort Pierre leaves a net operating revenue of \$1,180.02. We have no valuations of either of these exchanges. The reported valuation made in the annual report of the Pierre exchange is \$49,209.20 and of the Fort Pierre exchange \$11,943.65. For the purpose of determining the revenue accruing to the Pierre and Fort Pierre exchanges, the toll rate of 5 cents per message between these exchanges will be apportioned one-half to each.

In Rate Filing Nos. 1 and 2, the telephone company has made application in accordance with a well established custom for permission to name a rate from which, if paid on or before the tenth day of the current month, a discount of 25 cents would be made. It is the universal custom for public utility companies to quote rates on this basis, and the courts and commissions generally have approved this basis as reasonable. This Commission has previously ap-

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proved such practice, and the telephone company will be permitted to add to its monthly rental rate the sum of 25 cents to be deducted if the rate is paid on or before the tenth day of the current month.

This Board in deciding this case at this time fully realizes that the findings and any order which it may make in the premises are purely experimental, as there is no method of determining the revenue which will accrue under the 5 cent toll rate on messages between the two exchanges. After these rates have been in effect for a period of six months, this Board will, on the application of either party re-examine the questions involved in this case. The telephone company will be given until July 1, 1915, to put the rates herein established into effect.

ORDER.

In this cause, the Board having made a thorough investigation and on this date filed its findings of fact and conclusions of law, and being fully advised in the premises, and just and sufficient cause for this order appearing:

It is ordered, considered and adjudged: (a) That the reasonable maximum rates and the different classes of telephone service to become effective July 1, 1915, to be charged, collected and received by the Dakota Central Telephone Company for telephone rentals and telephone service in connection therewith, be and the same hereby are fixed and classified as follows:

PIERRE.

Main line business, per month.....	\$2 25
Two-party line business, per month.....	1 75
Four-party line business, per month.....	1 50
Main line residence, per month.....	1 50
Two-party line residence, per month.....	1 25
Four-party line residence, per month.....	1 00
Churches, schools, societies, etc.....	1 50
Private branch exchange, trunk.....	2 25

(b) That the reasonable maximum rates and the different classes of telephone service to become effective July 1,

1915, to be charged, collected and received by the Dakota Central Telephone Company for telephone rentals and telephone service in connection therewith be and the same hereby are fixed and classified as follows:

FORT PIERRE.

Main line business, per month.....	\$2 00
Two-party line business, per month.....	1 50
Main line residence, per month.....	1 25
Two-party line residence, per month.....	1 15
Four-party line residence, per month.....	1 00
Churches, schools, societies, etc.....	1 50
Private branch exchange, trunk.....	2 00

(c) That for additional equipment the reasonable maximum rates be and hereby are fixed at the following amounts:

Extension to business 'phone (complete set), per month....	\$1 00
Extension to business 'phone, (talking set only), per month....	50
Extra extension bells, per month.....	25
Desk sets, per month.....	25

(d) That for the transmission of messages between the two telephone units known as the Pierre exchange and the Fort Pierre exchange the reasonable maximum toll fee or rate be and hereby is fixed at 5 cents per completed message, one-half of which amount, for the purpose of ascertaining the earnings of the respective exchanges, or $2\frac{1}{2}$ cents per completed call, shall be apportioned to each exchange.

(e) That permission is hereby given and granted to the Dakota Central Telephone Company in filing its schedules of rates to add to each class of service for telephone rentals the sum of 25 cents, which amount shall be deducted from the telephone rental to be paid if, and only if, the rental rate shall be paid on or before the tenth day of the current month.

(f) That the rates herein fixed and determined shall become effective July 1, 1915.

Dated May 18, 1915.

H. H. MOTLEY v. DAKOTA CENTRAL TELEPHONE COMPANY.

F-194.

Decided May 22, 1915.

**Extension in Hours of Service Ordered — Provision for Emergency
Service Ordered Made — Increase in Rates for Business Tele-
phones and Party Line Rural Telephones Authorized —
Gross Rate 25 Cents in Excess of Net Rates
Permitted — Discount for Prompt
Payment Authorized.**

Complainant sought additional service at the Frankfort exchange of the defendant.

Although the complainant did not wish continuous night service, he desired that provision be made for emergency service by having some person available who could answer calls coming to the switchboard during the times when the exchange was not open, and also desired regular service somewhat earlier in the morning and somewhat later in the evening than was at present furnished. The telephone company was willing to afford this additional service but urged that the rates which it was charging at Frankfort, viz., \$1.00 per month for all classes of service, were not sufficient to enable it to give such service.

Held: That the patrons of the exchange are entitled to emergency night service and also week day service from 6:30 A. M. to 9:30 P. M. and Sunday service from 8 A. M. to 12 M. and 2 P. M. to 6 P. M.; that between 9:30 P. M. and 6:30 A. M. arrangements should be made to have some person sleep in the room in which the switchboard is located, or in some adjoining room, with a night alarm bell attached to the switchboard, so that such person will answer all calls coming on to the switchboard during the night; that as the switchboard is now located in the front end of a drug store and as no provision can be made for the operator to sleep near the switchboard during the night, the switchboard should be removed from its present location to the rooms on the second floor of the same building, or to some other suitable rooms;

That two classes of patrons will be benefited by this change in service, business subscribers and rural party line subscribers; that consequently the added cost for this service should be apportioned to these classes; that the business rate should be increased from \$1.00 to \$2.00 per month and the rural party farm line rate from \$1.00 to \$1.25 per month;

That the defendant should be authorized to file a schedule naming rates 25 cents in excess of those established by the Board, subject to a discount of 25 cents per month as to business and residence telephones if the rentals are paid on or before the tenth day of the current month, and subject to a discount of 25 cents per month for rural lines if paid quarterly in advance.

FINDINGS AND CONCLUSIONS.

By the Board:

In this case there was a complaint filed for additional service at the Frankfort exchange and for the rural lines connected therewith. The patrons of the exchange, according to the complaint and the evidence offered at the hearing, desire night service and service at a somewhat earlier hour in the morning and later in the evening. The witnesses at the hearing unanimously expressed the opinion that they did not wish continuous night service, but only such as is afforded by some person sleeping in the exchange building, and an arrangement for such person to answer calls coming on to the switchboard during the times when the exchange is not open. The telephone company is quite willing to afford the additional service, but urges that the rates which it is charging for the service at the Frankfort exchange and on the rural lines radiating therefrom, are not sufficient to enable it to give this additional service.

It appears from the evidence that there is no distinction between business, residence and rural line service, and a rate of \$1.00 is charged for all classes of service. No distinction is made at this exchange between main line, loop line and party line service. There are 94 subscribers on the rural lines; 24 business subscribers and 41 residence subscribers, making a total of 159 instruments in service at this exchange and its connecting rural lines, all of the rural lines belonging to the telephone company operating the local exchange.

We find from the evidence in this case that the patrons of this exchange are entitled to the night service for which they make application, as well as for a greater day service, commencing at 6:30 A. M. and terminating at 9:30 P. M., and during the time between 9:30 P. M. and 6:30 A. M. there should be arrangements made by the defendant to have some person sleep in the room in which the switchboard is located, or in some adjoining room with a night alarm bell attached to the switchboard so that such person will answer all calls coming on to the switchboard in the night time.

Under the present arrangement and the present location of the switchboard, this will be impossible and it will be necessary for the defendant to secure other quarters for the location of its switchboard, and suitable quarters can be had in the same building on the second floor. The switchboard is now located in the front end of a drug store, and no provision can be made for an operator to sleep near the switchboard or in the drug store during the night time. The removal of the switchboard from its present location in the front end of the drug store to the second floor will necessitate the renting of two rooms, one for the location of the switchboard and the establishment of the exchange, and the other a sleeping apartment adjoining. This will incur additional expense in the way of rent, light and fuel, and it will be necessary to employ some person to remain in these quarters during the night time to answer calls coming on to the switchboard. The cost of this service is not yet definite and certain, nor has the additional cost in the way of rent, light and fuel been ascertained. There are two classes of patrons or subscribers to be benefited by this change in the service; one is the subscriber to the business 'phone, including physicians, and the other is the subscriber to the rural party lines so that the added cost for this service should be apportioned to these two classes. We find from all the evidence that a rate of \$1.25 for each subscriber to a telephone instrument for service on a rural party line is a fair and reasonable rate. It is the rate generally charged throughout the State for this class of service, and that a rate of \$2.00 per month is a fair and reasonable rate for a subscriber to a business telephone and for telephone service in connection therewith. Applying this proposed increase to the number of telephone instruments in service of the respective classes, we find an increased revenue of \$23.50 per month on rural lines and of \$24.00 per month at business telephone stations. We do not think that the rate of \$1.00 per month charged for the rental of telephone instruments at places of residence within the city of Frankfort should be disturbed.

Upon a consideration of all the evidence in the case, we are of the opinion and find that the Dakota Central Telephone Company should be required to remove its present switchboard to the second floor of the building in which it is now located where it should occupy the two front rooms, the larger room to be used for exchange purposes and the smaller for a sleeping apartment; that it should make arrangements to have some person occupy the sleeping apartment and so connect that room and the switchboard by means of a night alarm bell as to provide for the answering of all calls coming on to the switchboard during the period between 9:30 P. M. and 6:30 A. M. while the exchange is closed; that when this service has been installed, it be permitted to charge, collect and receive at the exchange at Frankfort the following rates:

Business telephones per month.....	\$2 00
Residence telephones per month.....	1 00
Rural party line telephones per month.....	1 25

Usual charges for additional equipment; as to rural party lines, the telephone rentals shall be paid quarterly in advance.

That permission is hereby granted to the defendant to file a schedule naming rates 25 cents in excess of those herein established, subject to a discount of 25 cents per month as to business and residence telephone instruments, if the rentals are paid on or before the tenth day of the current month; and as to the rural lines, subject to a discount of 25 cents per month, if paid quarterly in advance.

The order to be made in this proceeding should likewise provide that the Sunday service at Frankfort shall be between the hours of 8:00 A. M. and 12:00 M., and from 2:00 P. M. to 6:00 P. M.

ORDER.

In this case the Board having made its investigation and filed its findings and conclusions, and being fully advised in the premises, and sufficient cause for this order appearing:

It is, therefore, ordered, considered and adjudged, That the Dakota Central Telephone Company, the above named defendant, be, and hereby is, required to remove its switchboard from the drug store in Frankfort and locate it in the room upstairs in the same, or in some other suitable building, and there provide for night service between the hours of 9:30 P. M. and 6:30 A. M of the succeeding day, by having some employee occupy a sleeping apartment adjoining its exchange room so as to answer all calls coming on to the switchboard; that it also provide for Sunday service from the hours of 8:00 A. M. to 12:00 M., and from 2:00 P. M. to 6:00 P. M.; and for week day service from 6:30 A. M. to 9:30 P. M.; that when this service is established, it be, and hereby is, permitted to charge, collect and receive the following rental rates, to wit:

Business telephone service per month.....	\$2 00
Residence telephone service per month.....	1 00
Rural party line telephone service per month.....	1 25

and that it be, and hereby is, permitted to file a schedule naming rates 25 cents per month in excess of the rates herein established which shall be subject to a discount as to business and residence telephones of 25 cents per month, if paid on or before the tenth day of the current month, and as to rural party line telephones to a discount of 25 cents per month, if paid quarterly in advance.

Dated May 22, 1915.

WASHINGTON.

The Public Service Commission.

THE PUBLIC SERVICE COMMISSION OF WASHINGTON *ex rel.* B.
WIEMAN *v.* RICHMOND BEACH TELEPHONE AND POWER
COMPANY.

No. 1741.

Decided April 24, 1915.

**Re-establishment of Schedule of Flat Rates Ordered — Discontinuance
of Toll Rates Ordered — Limitation of Period of
Conversation Authorized.**

Complaint alleged that the rates charged by the defendant for service at Richmond Beach, and for service between Richmond Beach and Seattle, were excessive.

Prior to July 1, 1914, the defendant had been charging flat rates for service at Richmond Beach, including service between Richmond Beach and Seattle, but on that date had filed a schedule providing a toll rate for all calls beyond an exchange radius of one-half mile, and for all calls between Richmond Beach and Seattle.

The defendant denied that the present rates were excessive, and alleged that service with Seattle under a flat rate was unsatisfactory, that to afford satisfactory service under a flat rate it would be necessary to build additional trunk lines, that the defendant had no money with which to build such lines, that service between Richmond Beach and Seattle was properly toll service.

The capital stock of the defendant was \$15,000, the total paid into treasury by the stockholders was \$1,875, the reproduction value was found to be \$8,979 and the present value \$6,413.62, the amount of investment to date \$5,568.48 and the fair value for rate-making purposes \$8,000.

Although the defendant had never paid any dividends, it had added to its plant from earnings an average of \$471.70 annually. In addition to 10 per cent. on their investment earned each year, the stockholders had a plant that actually cost \$5,568.48 and which had earned them \$1,382 in excess of a 10 per cent. return upon their investment in eight years of operation.

Held: That if the stockholders paid the amount due from them upon their stock subscription, the company would have ample funds for betterments and extensions.

That the rates made effective July 1, 1914, were excessive, and the rates in effect prior to that date should be re-established as said rates would yield the company a return in excess of 10 per cent. on its investment, in addition to maintaining a proper depreciation fund.

That the company might, to prevent the monopolization of its trunk lines by certain subscribers, limit conversation to five minute periods.

FINDINGS OF FACT AND ORDER.

On July 1, 1914, the plaintiff filed a complaint against the Richmond Beach Telephone and Power Company, alleging that the rates effective July 1, 1914, were excessive, exorbitant and extortionate, and unjustifiably oppressive. Prior to July 1, 1914, the defendant company charged a flat rate. By the schedule of July 1, 1914, the flat rate was changed to a toll rate beyond an exchange radius of one-half mile, and between Richmond Beach and the city of Seattle.

On October 5, 1914, the defendant company filed its answer, denying the allegation of the complaint, and alleging affirmatively that the said company had never paid any dividends; that the service under a flat rate with the exchange at Seattle was unsatisfactory; that by operating under a flat rate it was impossible to afford satisfactory service without building additional trunk connections, and that the said company had no money with which to build such additional trunks; that the service between Richmond Beach and Seattle was a toll service, and that such toll service was justifiable.

On the twenty-third day of October, 1914, an amended complaint was filed, and The Pacific Telephone and Telegraph Company made a party defendant. The case was set for hearing October 19, 1914, at 9:30 o'clock A. M., at which time the defendant company appeared by *J. S. Robbins*, its attorney, the complainant by *John Whitham*, its attorney and the Commission by *Mr. Scott Z. Henderson*, its attorney. Testimony was taken and the hearing continued for the purpose of allowing a valuation of defendant's property.

On the seventh day of October, 1914, to which date the case had been continued, the defendant, The Pacific Tele-

phone and Telegraph Company appeared by its attorneys, Mr. Otto Rupp, Mr. James Shaw and Messrs. Pillsbury, Madison and Sutro. Further testimony was taken and the case finally closed and submitted.

FINDINGS OF FACT.

The Commission finds: That the Richmond Beach Telephone and Power Company was organized March 18, 1907, with a capital of \$15,000, divided into 150 shares of the par value of \$100 each; that the total amount paid by the stockholders into the treasury of the Richmond Beach Telephone and Power Company was the sum of \$1,875; that the reproduction value of the property of the Richmond Beach Telephone and Power Company is the sum of \$8,979; that the present value of the property is \$6,413.62; that the amount invested to date is the sum of \$5,568.48; that a fair valuation for rate making purposes is the sum of \$8,000; that the said Richmond Beach Telephone and Power Company alleges it has no money with which to provide additions necessary to the proper operation of its business.

The Commission further finds: That, while the said Richmond Beach Telephone and Power Company has not paid any dividends to its stockholders, from its earnings it has added to its plant since beginning operation in 1907 additions averaging \$471.70 annually; that, as stated above, the total cash investment of the stockholders is the sum of \$1,875; that the remaining amounts invested in the plant have been taken from the earnings of the said Richmond Beach Telephone and Power Company; that, as the plant stands to-day, in addition to earning 10 per cent. upon the investment each year, the stockholders have a plant that actually cost \$5,568.48 and earned them \$1,382 in excess of 10 per cent. return upon their investment in the eight years of operation; that there is due from said stockholders to said Richmond Beach Telephone and Power Company the sum of \$13,125; that if this balance of the stock subscription were paid into the treasury of the Richmond Beach Tele-

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phone and Power Company, said company would have ample funds wherewith to make betterments and extensions.

The Commission further finds: That on the thirteenth day of March, 1914, the Richmond Beach Telephone and Power Company filed with this Commission a new schedule of rates, designated as Tariff No. 2; that said Tariff No. 2 was effective July 1, 1914, and in a measure increases the returns of the Richmond Beach Telephone and Power Company, and materially increases the returns of The Pacific Telephone & Telegraph Company; that such increased rates are not satisfactory to the patrons, and many have discontinued the service of the Richmond Beach Telephone and Power Company on account of the change; that the rates and charges as named in said Tariff No. 2 are excessive and unreasonable; that under Tariff No. 1 of the Richmond Beach Telephone and Power Company, in effect prior to July 1, 1914, said company was earning in excess of 10 per cent. per annum on its investment, in addition to maintaining a proper depreciation fund; that the re-establishment of rates as set out in said Tariff No. 1 would not reduce the returns of the said company below a fair and reasonable return upon the investment;

And the Commission at this time having under investigation and in course of valuation the properties of The Pacific Telephone and Telegraph Company in the State of Washington with a view of establishing reasonable rates at that company's various exchanges, and reasonable and proper rates for telephone toll service, and as such investigation of the charges and service of said The Pacific Telephone and Telegraph Company will be completed in the near future, and material changes may be necessary in the present limits for suburban service, and the contracts of The Pacific Telephone and Telegraph Company with other independent companies operating in the State of Washington, it is deemed at this time advisable to establish certain reasonable rates as a temporary relief to the patrons of the said Richmond Beach Telephone and Power Company:

The Commission further finds: From the evidence, that the lines of the defendant Richmond Beach Telephone and Power Company are monopolized by extended individual conversations to the exclusion of other parties desiring the use of said lines which practice if continued might necessitate the installation of additional facilities by said company not required if the lines are used in a reasonable manner; therefore,

The Commission orders: That the Richmond Beach Telephone and Power Company do, within twenty days from date of service of this order, cancel the rates and charges named in its Tariff No. 2, above referred to, and reinstate in lieu thereof the rates, charges and services set out and specified in its Tariff No. 1, and supplements thereto, as filed with this Commission; *provided* that the said company may, if it so desires, amend such tariff limiting the conversations to five minutes' duration; said rates to be, and remain, in effect until this Commission shall have completed its investigation of the properties of The Pacific Telephone and Telegraph Company in the State of Washington, at which time a further order in this case will be entered establishing permanent reasonable rates and service for said Richmond Beach Telephone and Power Company.

WITNESS: The Public Service Commission of Washington, this the twenty-fourth day of April, 1915.

WISCONSIN.

Railroad Commission.

ELEVA FARMERS TELEPHONE COMPANY v. MONDOVI TELEPHONE COMPANY.

U-417.

Decided April 28, 1915.

Extension into Occupied Territory Rendered Unobjectionable by Transfer of Duplicated Portion of Property of Occupying Company to Invading Company — Installation of Additional Line between Exchanges Agreed Upon — Continuous Service to Be Furnished.

OPINION AND DECISION.

Complaint in this matter was filed with the Commission January 24, 1915, and hearing was held at Mondovi, February 15, 1915. Briefly stated, the facts in the case are as follows:

The Eleva Farmers Telephone Company and the Mondovi Telephone Company operate lines in the rural territory between Eleva and Mondovi, these lines practically meeting at a point about six miles distant from each town. It appears that a number of years ago an agreement was entered into fixing a line of division between the territory of the Eleva company and that of the Mondovi company. A number of parties living near this line of division and having more use for the facilities of the Mondovi company than for those of the Eleva company have expressed themselves as dissatisfied with the service of the Eleva company, particularly because of the fact that service was not furnished on a 24-hour basis. One of these subscribers living just within the Eleva company's territory discontinued his use of the Eleva 'phone and secured connection with the lines of the Mondovi company. In making this extension,

the Mondovi company did not notify the Eleva company or the Commission of its intention to make such extension as provided by the anti-duplication law. It is understood that an agreement is to be reached for a transfer of the portion of the system of the Eleva Farmers Telephone Company serving the locality in question to the Mondovi Telephone Company and therefore no order will be necessary regarding the question of duplication of lines.

The other matter raised in the complaint was with reference to service between Eleva and Mondovi. It appears that there is only one direct line between these localities and that consequently the service between Eleva and Mondovi has been unsatisfactory. Parties living in the locality referred to above who have their business and social relations primarily with Mondovi found this lack of service particularly unsatisfactory. At the time of the hearing it was stated that continuous service was to be furnished from that time on by the Eleva Farmers Telephone Company so that there is no occasion for an order relating to continuity of service.

With regard to the lines between Eleva and Mondovi, it is admitted by an officer of the Mondovi company that a second line should be put in, and it was stated that the Mondovi company expected to put in its share of such line within a short time. No question was raised as to the necessity for such line, the testimony dealing merely with the reasons why it had not been installed prior to the time of the hearing. In view of the fact that both companies recognize the necessity of having a second line and that the Eleva company has its portion of the line already constructed and that an officer of the Mondovi company testified at the hearing that his company would build its portion of the line, no order is believed necessary in this case.

The case is therefore dismissed.

Dated at Madison, Wisconsin, this twenty-eighth day of April, 1915.

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IN THE MATTER OF THE APPLICATION OF THE COLFAX TELEPHONE EXCHANGE FOR AUTHORITY TO INCREASE RATES.

U-419.

*Decided April 28, 1915.***Increase in Single Party Residence Rates Authorized — $6\frac{1}{2}$ Per Cent. Allowed as Reserve For Depreciation In Computing Expenses.**

Petitioner sought authority to increase its rates for single party residence service from \$1.00 to \$1.50 per month on the ground that the expense of constructing and maintaining single party residence lines had increased.

The Commission examined the company's report of the value of its property and considered its operating revenues and expenses. In computing the latter it allowed $6\frac{1}{2}$ per cent. as reserve for depreciation.

Held: That although the total revenues to be produced by the proposed change would not increase the company's return to the point of unreasonableness, nevertheless the same rate should not be made for single party residence service as for single party business service, but a distinction should be made between business and residence service; that nevertheless a higher rate for single party than for two, three or four party residence service was justifiable;.

That a rate of \$1.25 per month for single party residence service should be authorized.

Increase in Rates for Short Term Service Authorized — Minimum Charge for Short Term Service Fixed — Requirement of Advance Payment Authorized.

Petitioner sought to establish a rate of \$2.00 per month for short term service, with charges of \$2.00 for installing, and \$2.00 for disconnecting, telephones.

Held: That some addition to the regular rates should be made in the case of short term service, but that the proposed charge by the petitioner was unduly high;

That considering the practice in other localities, the charge for short term service should be fixed at 50 per cent. in excess of the charge for service on a yearly contract basis, with the provision that the minimum charge should be the charge for three months' service;

That the petitioner might reasonably insist that short term subscribers pay their charges in advance, and that unless said charges were paid before the tenth of the month, petitioner might discontinue service.

Charge for Changing Location of Telephone Fixed.

Petitioner sought to charge from \$1.00 to \$2.00 for changing the location of telephones.

Held: That in the absence of any evidence showing the desirability that the rate for this service should vary between \$1.00 and \$2.00, the charge should be fixed at \$1.50.

OPINION AND DECISION.

Application in this matter was filed with the Commission February 23, 1915. The applicant is a public utility engaged in the management and operation of a telephone exchange in the village of Colfax and vicinity.

The lawful rates of the applicant as set forth in its petition are as follows:

Village rates: Business telephones, \$1.50; and residence telephones, \$1.00 per month; payable the first of each month.

Rural rates: \$18.00 per year, with discount of \$3.00 if paid within three months.

Non-subscriber rates: 10 cents per message, except in the case of parties making their home at a hotel or residence where there is a telephone.

Petitioner alleges "(1) that the expense of maintaining and construction of residence party lines has increased, (2) an increase in short-time service was necessary to pay expense of installing and taking out telephones, (3) the demand for change of location of telephones has increased to the extent that makes it necessary to make a nominal charge."

Petitioner therefore asks for authority to amend its rates as follows: (1) single-party residence rates to be changed from \$1.00 to \$1.50 per month, (2) rates for service for a time less than one year to be \$2.00 per month with a charge of \$2.00 for installing and \$2.00 for taking out the instrument, payment to be made the first of each month or telephones to be disconnected within ten days; (3) a nominal charge of \$1.00 to \$2.00 to be made for changing the location of instruments.

Hearing in this matter was set for April 15, 1915, but there were no appearances. A letter from the company under date of April 20 states that the amount involved was so small that it was thought unnecessary to send a representative to attend the hearing.

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An examination of the last report filed by the Colfax Telephone Company shows that the value of property and plant as appearing on the company's books December 31, 1914, was \$24,954.42. This report covers a period of 18 months from July 1, 1913 to December 31, 1914. During this period, revenues were \$8,240.10, and expenses, exclusive of any allowance for depreciation and interest, were \$3,441.09, leaving \$4,799.01 available for interest and depreciation for the 18 months. Depreciation at the rate of 6½ per cent. per year on the value of the plant as carried on the company's books would amount to \$2,433.06 for 18 months, leaving \$2,365.95 available for interest, or a little over 6.3 per cent. per year. The report shows that on December 31, 1914, the company had a total of 389 subscribers of whom 262 were on rural lines and 127 were on local lines. All local lines were reported as metallic, and the report indicates that of the rural lines, 15 were metallic and 6 grounded. The plant value per subscriber is therefore very nearly \$64.00 which, in view of the fact that the system appears to be well constructed, seems to be a reasonable value. The average number of subscribers carried during the 18 months ended December 31, 1914, was 359. Operating expenses based upon the average number of subscribers were \$9.50 per subscriber for 18 months, or \$6.40 per subscriber per year. This appears to be a very conservative operating expense. The number of single-party local residence subscribers reported as of December 31, 1914, was 16. The total increase of revenues resulting from a change of the single-party residence rate from \$1.00 to \$1.50 per month would therefore be \$96.00 per year. There would be some revenue produced by the other proposed amendments affecting the short time rate and the charge for changing location of instruments, but we have no data before us which would enable us to state the probable revenue from these sources. Although the total revenues to be produced by the proposed changes would not increase the company's return to the point of unreasonableness, we believe that a proper distinction between residence

and business service would hardly warrant the establishment of the same rate for single-party residence service as for single party business service, although there is no question that a higher rate for single-party residence service than for two-, three-, or four-party residence service is justifiable. We believe that a rate of \$1.25 per month for single-party residence service should be authorized in this case.

The company proposes to put in effect a rate of \$2.00 per month where service is maintained for less than one year, with a charge of \$2.00 for installing and \$2.00 for disconnecting the telephone. That some addition to regular rates should be made in the case of short-time service would appear to be unquestionable, but the amount proposed by the company appears to be unnecessarily greater than the rates on a yearly contract basis. It may be that there are local conditions which would justify the rate suggested by the utility for short-time service, but if there are such conditions, the Commission has not been appraised of their existence. Therefore, we believe that in establishing a short-time rate we should be guided in a general way by the practice in other places. If the charge for service on a short time basis be fixed at 50 per cent. in excess of the charge for service on a yearly contract basis, with a provision that the minimum charge shall be the charge for three months' service, we think the company will be fully protected without placing any unreasonable burden upon short-time users. It will be a reasonable requirement to insist that short-time users pay their charges in advance and that unless paid in advance before the tenth of the month the company may discontinue service.

The third portion of the company's application relates to a charge of from \$1.00 to \$2.00 for changing the location of telephones. This is a matter which is handled in different ways by the different telephone companies. Some companies make a fixed charge regardless of the cost of the particular job, while others charge the actual cost of doing the work. Other companies make a distinction between the

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charges for such work on local lines and on rural lines. We are not fully advised as to what, if any, reasons would make it desirable that this rate should be permitted to vary between \$1.00 and \$2.00. A charge of \$1.50 for changing the location of telephones appears to be reasonable. Therefore, it will be authorized in this case.

It is, therefore, ordered, That the applicant, the Colfax Telephone Exchange, be, and the same hereby is, authorized to amend its schedule of rates by adding to it the following rates: (1) single-party residence service, \$1.25 per month; (2) service on less than a yearly contract basis, 50 per cent. more than the yearly contract basis rates for the class of service in question, with a minimum charge for three month's service at such increased rate; (3) a charge for moving telephones of \$1.50.

Dated at Madison, Wisconsin, this twenty-eighth day of April, 1915.

IN THE MATTER OF THE APPLICATION OF THE CAMERON FARMERS TELEPHONE COMPANY FOR AUTHORITY TO INCREASE ITS RATES.

U-421.

Decided April 29, 1915.

Increase in Rates Authorized.

Applicant sought authority to increase its rates for business, residence and rural service 25 cents per month.

The Commission considered the value of the property and the operating expenses and revenues, especially the strict economy practiced by the applicant.

Held: That as the value of the property was apparently much greater than reported, as considerable reconstruction was about to take place which would increase the present value, and as it was improbable that proper operation and maintenance adequate to give a reasonable standard of service could be had on as economical a basis as had been previously practiced by the company, the increase should be authorized.

OPINION AND DECISION.

Applicant is a telephone company engaged in the operation of a telephone utility in and around the village of

Cameron, Wisconsin. Application in this case has grown out of a letter from the secretary of the company under date of June 15, 1914, making request for authority to increase its charges for rural telephones from 50 cents to 75 cents per month, and for city telephones from 75 cents to \$1.00 per month. In the letter referred to it was stated that the lines are not in as good condition as they should be, and that the company finds it impossible to keep them in good shape with the present revenues, but that the company expects that the increase asked for would be sufficient to enable it to keep the lines in good repair and maintain service at a proper standard.

On June 23, 1914, the applicant was advised that this was a matter which would require a formal hearing before the Commission, and formal application was filed on February 9, 1915. As stated in the application, the lawful rates of the applicant now in effect are as follows:

Rural telephones	\$0 50 per month
Residence telephones in the village.....	75 per month
Business telephones in the village.....	1 00 per month

Application is made for authority to discontinue the present schedule of rates and to put in effect the following schedule:

Rural telephones	\$0 75 per month
Residence telephones in the village.....	1 00 per month
Business telephones in the village.....	1 25 per month

Hearing was held in Madison, March 17, 1915. *S. S. Berg* and *George Nelson* appeared for the applicant, and there was no appearance in opposition.

It appears that applicant had at the time of the hearing 65 telephones in the village and 144 rural telephones on 11 rural lines. On December 31, 1914, the number of telephones as reported to the Commission was 202, divided as follow: 22 business 'phones, 34 village residence 'phones, and 146 rural 'phones. The testimony indicates that some parts of the system are in rather poor condition and that

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the company will have to rebuild portions of it within a short time.

The value of the property and plant as of December 31, 1914, was shown as \$4,440 or about \$22.00 per telephone. Part of the lines are constructed on cedar poles and others are on native poles. Revenues for the 18 months ended December 31, 1914, were reported as \$2,393.84. The application of the present schedule to the number of subscribers connected on December 31, 1914, would produce revenues of \$1,446 per year. The testimony indicates that in addition to revenue from the application of subscribers' rates, the company receives about \$8.00 a month as its percentage of the toll collected for the Barron County Telephone Company, this amount being 33 $\frac{1}{3}$ per cent. on originating messages. At this rate the annual revenues of the company would be approximately \$1,542, and the revenues for 11 $\frac{1}{2}$ years would be \$2,313. The number of subscribers increased somewhat during the 18 months' period covered by the company's last report so that there is an apparent discrepancy of approximately \$100 between the earnings as reported by the company and the probable revenues as computed from the application of its existing rate schedule. This is probably due to the reporting of receipts rather than actual earnings by the utility.

It appears that the utility has connection on an unlimited exchange basis with the following telephone companies: the Hillsdale and Western Telephone Company, the Chetek Rural Telephone Company, the Canton Farmers Telephone Company, and the Prairie Farm, Ridgeland and Dallas Telephone Company. Connection is also had with the Barron County Telephone Company upon the basis mentioned above. This gives subscribers of the applicant unlimited service over a system much larger than that of the applicant itself, and for any reasonable degree of service the present rates are so low as evidently to be entirely inadequate.

The proposal to increase rates as outlined in the application with the number of subscribers as of December 31,

1914, would increase revenues by \$609 per year, or if the rates asked for had been in operation for the 18 months' period covered by the company's last report, total revenues would probably have been something under \$900 more than those reported by the utility, giving consideration to the fact that the number of subscribers at the beginning of the period was not as large as at the end. Assuming an increase of \$900, however, the total revenues for the 18 months' period would have been \$3,293.84. Expenses as reported by the company were \$2,391.38.

The testimony indicates that the policy of the company with regard to expenditures has been very conservative. Officers have received only nominal salaries, and a lineman has been employed on a part time basis only. Despite the fact that expenses were reported as \$2,391.38 for the 18 months' period, it seems evident that proper operation and maintenance to give even a reasonable standard of service cannot be permanently carried on on as economical a basis as has heretofore existed. Accepting the operating expenses as reported, there would apparently remain for interest and depreciation a sum of \$902.46, which would probably be reduced to something less than \$900 when full allowance is made for the fact that the number of subscribers at the beginning of the period was somewhat smaller than at the end. At first sight this looks like an adequate allowance for interest and depreciation, but the furnishing of proper service in the future involving, as it necessarily must, the reconstruction of a considerable part of the system upon a more expensive basis than the original construction will increase the plant value beyond the point reported by the company. The amount reported appears to be merely an estimate placing the value of the plant equal to the amount of stock outstanding. The testimony shows that instruments are owned by the company, and under such condition, it seems unquestionable that a telephone system designed to give proper service would cost very much in excess of the cost carried on the books of the company.

Under these conditions, there seems no reason to question the reasonableness of the application for authority to

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increase rates, provided adequate service is furnished. As there was no question of service raised in this case, the testimony having to do with the quality of service rendered was only incidental, but it seems that in authorizing an increase in rates the Commission should require that the company comply with the standards for telephone service within a reasonable time. No order on this point is necessary, as the general order* of the Commission fixing standards of telephone service is applicable.

It is, therefore, ordered, That the applicant, the Cameron Farmers Telephone Company be, and the same hereby is, authorized to discontinue its present schedule of telephone rates and to substitute therefor the following schedule:

Business telephones in the village.....	\$1 25 per month
Residence telephones in the village.....	1 00 per month
Telephone on rural lines, whether within or without the village limits	75 per month

Dated at Madison, Wisconsin, this twenty-ninth day of April, 1915.

IN THE MATTER OF THE APPLICATION OF THE MORRIS TELEPHONE COMPANY FOR AUTHORITY TO INCREASE RATES.

U-422.

Decided April 29, 1915.

Increase in Rates Authorized — Additional Classifications Approved.

OPINION AND DECISION.

Application in this matter was dated February 13, 1915. The applicant is a telephone utility engaged in the management and operation of a telephone line in the town of Morris, Shawano County.

The legal rate of the company for exchange service for its subscribers is 50 cents per month per telephone as authorized by the Commission in a decision in a similarly

* See Commission Leaflet No. 34, p. 1127.

entitled matter issued July 22, 1911, 7 W. R. C. R. 426-427. The rate schedule of the company as legally on file contains also for local service a charge of 10 cents per message for non-subscribers. Subscribers furnish and maintain their own telephones. Application is made for authority to put in effect the following schedule:

Residence 'phones	\$0 75 per month
Business 'phones	1 25 per month

Subscribers to furnish and maintain their own telephones as heretofore.

Hearing was set for April 9, 1915, but no appearances were made.

The application states that present rates are inadequate to keep the system in proper condition and to maintain an exchange at Bowler. The record is not complete with regard to just what arrangements are to be made for keeping up such an exchange, as the rate file of this company shows that switching service is obtained from the Marion and Northern Telephone Company. The last report filed by the company is somewhat confusing with regard to the number of subscribers, but apparently there were on December 31, 1914, a total of 66 subscribers, of whom 14 had business telephones and the remainder had residence telephones, either on local or on rural lines.

The application of the proposed rates to the number of subscribers as reported would result in an average rate of \$9.83 per year. Although this appears to be a very low rate for telephone service, it must not be forgotten that subscribers furnish and maintain their own instruments and that the expense of proper maintenance of telephone instruments, particularly on rural lines, constitutes a considerable part of the total expense of telephone companies furnishing rural service. No extended analysis of the financial conditions of the company appears to be necessary in this case. If proper service is furnished, the proposed rates will not be unreasonable. The Commission has made a large number of investigations in cases somewhat similar to this and has failed to find facts upon which it could be

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held that a rate of 75 cents per month for residence and rural subscribers and \$1.25 per month for business subscribers would be unreasonable even when subscribers furnish and maintain their own telephones.

There is nothing in the record in this case with regard to service. The company, of course, is under the general obligation to comply with the Commission's decision* fixing standards for telephone service, and no special order need be issued in this case. It should be emphasized, however, that the rates formerly in effect were too low to enable the company to permanently furnish good service without endangering its financial condition. With the adoption of the new rate schedule, there will be no reason for exempting the company from compliance with the general rules for service.

It is, therefore, ordered, That the applicant, the Morris Telephone Company, be, and the same hereby is, authorized to discontinue its present rate for telephone service to subscribers and to substitute therefor the following rates:

Residence telephones	\$0 75 per month
Business telephones	1 25 per month

Dated at Madison, Wisconsin, this twenty-ninth day of April, 1915.

IN THE MATTER OF THE APPLICATION OF THE SANDUSKY TELEPHONE COMPANY FOR AUTHORITY TO INCREASE ITS RATES.

U-423.

Decided April 29, 1915.

Increase in Rates Authorized — 14 Per Cent. Allowed for Reserve for Depreciation and Return on Investment in Computing Expenses.

OPINION AND DECISION.

Application in this matter was filed with the Commission January 6, 1915. Applicant is a telephone utility operating

* See Commission Leaflet No. 34, p. 1127.

an exchange in the town of Washington. The application states that the legal rate of the utility now in force is \$10.00 per year per telephone and that increased expense of keeping up the central office and the expense of reconstruction of lines makes necessary an increase. Authority is therefore asked to put in effect a rate of \$1.00 per month.

Hearing was held at Madison, January 28, 1915. *Albert Prouty* appeared for the Sandusky Telephone Company, and there was no appearance in opposition. The testimony shows that the total number of telephones connected to the system was 60. The representative of the applicant estimated the cost of the system to have been about \$2,000. There are, according to the last report filed by the utility, 9 grounded rural lines connected to one central office. The number of miles of pole in use was reported as 20, with 30 miles of iron wire. Testimony is to the effect that all parts of the equipment were furnished and are maintained by the utility.

With regard to the investment, the representative of the utility was unable to give exact figures but stated that in his opinion the cost would be nearly \$2,000. The information which would be necessary to carefully check this estimated cost of the system is not in the record in this case. However, it appears that the estimated cost is conservative in that it amounts to only \$33.33 per telephone, with all of the equipment furnished by the company. The operating expenses as reported by the company are hardly representative of the true cost of operating and maintaining the system in that the owner of the company has apparently taken in the way of salary or return on his investment, without making any distinction between the two, whatever earnings there were which were not applied to other purposes. Therefore, the reported expenses are the same as the reported earnings, or \$900 for an 18 months' period ended December 31, 1914. Interest and depreciation computed at 14 per cent. on \$2,000 would amount to \$280 for a year, or \$420 for 18 months for the entire system. This is equivalent to \$4.66 per subscriber and \$6.99 per subscriber

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for periods of one year and 18 months respectively. An allowance of \$4.66 per subscriber per year for interest and depreciation would mean that the proposed rate of \$12.00 per year would be sufficient to pay the full allowance for interest and depreciation only in case the total expense of operation and current maintenance were not to exceed \$7.34 per telephone per year.

From its investigation of a number of other cases, the Commission has found that where metallic service is furnished to rural lines, it is usually impractical to furnish adequate service at a rate of \$12.00 per year but that grounded line service can sometimes be furnished at such a rate. In no case, however, has a careful investigation indicated that adequate service be furnished on grounded lines at a rate of less than \$12.00 per year, particularly if the number of subscribers per line is properly limited, as it appears to be on the average of all lines involved in this case. There is nothing in the record with regard to the service furnished by this company, but the company, of course, is under obligation to comply with the Commission's general order* fixing standards of telephone service, and it is to be presumed that with the increased rate as authorized in this case the company will not permit any grounds for complaint regarding service to exist.

It is, therefore, ordered, That the applicant, the Sandusky Telephone Company, be, and the same hereby is, authorized to increase its rate for telephone service from \$10.00 per telephone per year to \$12.00 per telephone per year.

Dated at Madison, Wisconsin, this twenty-ninth day of April, 1915.

* See Commission Leaflet No. 34, p. 1127.

THE MINONG TELEPHONE COMPANY v. THE LAKE SHORE TELEPHONE COMPANY, THE NANCY LAKE TELEPHONE COMPANY, THE GILMORE LAKE TELEPHONE COMPANY, THE BOND LAKE MUTUAL TELEPHONE COMPANY, THE FARMERS MUTUAL TELEPHONE COMPANY AND K. W. LEWIS.

U-425.

Decided April 29, 1915.

Increase in Exchange and Rural Rates Authorized.

Petitioner sought authority to increase rates from \$1.00 per month for all classes of service over its own lines to \$1.50 per month for single line business service, \$1.25 per month for single line residence service and \$1.00 per month for all party line service.

Held: That the rates sought to be established are reasonable and should be authorized.

Increase in Switching Rates Authorized in Part—Liability of Line Switched for Payment of Switching Charges of All Subscribers on Said Line Approved.

Petitioner also sought authority to increase its rates for switching service from 25 cents per telephone per month to 50 cents per telephone per month and to require that the lines switched should be responsible for the payment of the switching charge by every subscriber connected with said line.

Held: That the charge of 50 cents for switching was rather unusual, but that because of the small number of telephones in use in the territory around Minong, central office service was possible only upon payment of a rate higher than the ordinary switching rate.

That a rate of \$4.00 per telephone per year for switching rural line telephones, and a rate of 60 cents per telephone per month for switching telephones on lines of other companies with one to four parties attached, were reasonable.

That the petitioner might require payment by the organizations controlling the rural lines for which switching service was done instead of by individual subscribers on those lines, and that the petitioner might also require a proper guarantee of payment for switching service.

OPINION AND DECISION.

This case arises from a petition filed by Ira B. Cartwright as manager of the Minong Telephone Company for authority to increase rates on lines of the Minong Tele-

phone Company and to increase charges for switching on the lines of respondents.

Petition was dated November 24, 1914. Hearing was held at Minong, Wisconsin, December 28, 1914. Appearances were: for the Minong Telephone Company, *I. B. Cartwright*; for the Lake Shore Telephone Company and the Nancy Lake Telephone Company, *A. E. Adams*; for the Gilmore Lake Telephone Company, *Chris Link*; for the Bond Lake Telephone Company, *N. A. Thompson*; and for the Farmers Mutual Telephone Company, *B. H. Welch*.

It appears from the testimony introduced at the hearing that the Minong Telephone Company, of which *I. B. Cartwright* is principal owner, has about 26 telephones in the village of Minong and on a rural line reaching out from the village. According to the testimony of the representative of the Minong company, the number of telephones on each of the other lines at the time of the hearing was as follows: the Farmers Mutual Telephone Company, 14 telephones; the Bond Lake Telephone Company, 11 telephones; the Gilmore Lake Telephone Company, 10 telephones besides two in summer resorts; the Lake Shore Telephone Company, 5 telephones besides 4 in summer resorts; the Nancy Lake Telephone Company, 11 telephones besides one in a summer resort; and the Lewis line, 2 telephones; making a total of approximately 86 telephones connected directly to the Minong switchboard.

The rate of the Minong Telephone Company for its own service is \$1.00 per month for all classes of telephones. The company seeks authority to amend this rate by providing charges of \$1.50 per month for single-party business telephones, \$1.25 per month for single-party residence telephones, and \$1.00 per month for party line telephones. Petitioner also asks that the rate for switching be changed from 25 cents per month per telephone to be paid directly by the individual served by such telephone to 50 cents per month per telephone to be paid by the company receiving the service. Petitioner would find it difficult to discontinue service to individual subscribers of companies for which it does

switching, and the requirement that the lines as a whole should be held responsible for the payment of switching fees appears to be entirely reasonable. We see no reason to question the reasonableness of the rates which the Minong Telephone Company seeks to have authorized for subscribers on its own lines, and such rates will be authorized as asked for in the petition.

With regard to the charges for switching service, it should be said that 50 cents per month appears to be a rather unusual charge for service of the scope of that involved in this case. It must be borne in mind, however, that it is because of the small number of telephones in use in the territory around Minong that the cost per telephone for switching service is exceptionally high. The rural lines are long lines extending through a territory apparently not very closely settled, and although the number of calls passing through the central office may not be large, the conditions appear to be such that central office service is of great importance. With the small number of telephones at present in use, the only way that the companies can obtain the advantages of central office service appears to be for them to pay a somewhat higher rate than would usually obtain for such service in a well developed community. According to the testimony introduced, central office service is furnished from 6 A. M. to 10 P. M. on week days, and from 6 A. M. to noon and 6 to 10 P. M. on Sundays, and at other hours in case of sickness or for a fee of 10 cents per call.

Some objection was introduced to the proposed increase on the ground of poor service being furnished by the Minong Telephone Company. A number of the representatives of the rural lines, however, testified freely that their own lines were in poor condition and that they believed the Minong company was giving as good service as could be expected under the conditions.

Under all the circumstances as placed before the Commission in this case, we believe that a rate of \$4.00 per year for

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switching service should be authorized for each telephone on the rural lines and a rate of 60 cents per month for each telephone on lines with from one to four parties which are not owned by the Minong Telephone company. In all cases, the Minong Telephone Company will be within its rights in insisting that the lines as a whole shall be held responsible for the payment of the switching charges and that the Minong Company shall not be required to furnish switching service unless these lines make satisfactory arrangements for paying the switching charges.

It is, therefore, ordered,

1. That the Minong Telephone Company may discontinue its present rates for service on its own lines and substitute therefor the following rates:

Single-party business	\$1 50 per month,
Single-party residence	1 25 per month
Party lines	1 00 per month

2. That the Minong Telephone Company may discontinue its present schedule of charges for switching service and substitute therefor the following schedule:

Rural lines, \$4.00 per telephone per year payable quarterly unless otherwise agreed upon by the parties concerned.

Lines with from one to four parties 60 cents per month per party payable quarterly unless otherwise agreed upon by the parties concerned.

For all switching service the Minong Telephone Company may require payment by the organizations controlling the lines for which switching service is done instead of by individual subscribers of those lines, and the Minong Telephone Company may require proper guarantee of payment for switching service.

Rates as authorized in this order may be effective May 1, 1915.

Dated at Madison, Wisconsin, this twenty-ninth day of April, 1915.

IN THE MATTER OF THE EXTENSION OF THE MORGAN TELEPHONE COMPANY IN THE TOWN OF GREEN VALLEY, SHAWANO COUNTY.

U-426.

Decided May 4, 1915.

**Extension of Line into Occupied Territory Authorized Where Desired Service Cannot be Obtained Through Physical Connection —
Duplication of Facilities Permitted.**

The Morgan Telephone Company gave notice of a proposed extension of its line to the village of Green Valley. The Cecil-Green Valley Toll Line Company, which had a number of telephones in Green Valley, filed its objection.

Green Valley was the trading center for most of the subscribers of the Morgan Telephone Company and was the place to which they went to ship stock and to reach the railroad. Therefore it was important that they have communication with this village, but no present means of telephonic communication was furnished except by a very roundabout and expensive toll route via the Cecil-Green Valley line to Cecil, thence over the Wisconsin company's line to Oconto Falls, and thence over the Morgan company's line.

The business men of Green Valley were also desirous that the extension should be made as considerable of the trade from subscribers of the Morgan company, which normally should come to Green Valley, went to Oconto Falls because of the lack of telephone facilities to Green Valley.

The Cecil-Green Valley company did not operate an exchange in Green Valley but served its subscribers there through its Cecil exchange. The expense of stringing a wire from the Oconto Falls exchange of the Morgan company to connect with a new circuit of the Cecil-Green Valley company at Green Valley would be very great.

Held: That under the circumstances physical connection was not practical as a means of furnishing the service desired.

That the Morgan company should be permitted to extend its lines into the village of Green Valley.

That the Commission was unable to find that public convenience and necessity did not warrant the extension of the Morgan company's line into the village of Green Valley.

OPINION AND DECISION.

The Morgan Telephone Company operates a line of telephones extending southwards from Oconto Falls a distance of approximately eight miles and serving from

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twenty-five to twenty-six subscribers. The southern end of the line passes within three and a half or four miles of the village of Green Valley, a small hamlet on the line of the Chicago and North Western Railway in the town of Green Valley in Shawano County. On April 14, 1915, the Morgan Telephone Company served notice on the Commission of a proposed extension westward from its existing line to reach the village of Green Valley.

The Cecil-Green Valley Toll Line Company has a line extending from the village of Cecil eastward to the village of Green Valley, in which place it has a number of 'phones. This company filed an objection to the proposed extension of the Morgan Telephone Company and a hearing was held at the village of Green Valley on April 29, 1915.

P. H. Meyer appeared for the Cecil-Green Valley Toll Line company and *Andrew Dinse* appeared for the Morgan Telephone Company. The witnesses were the farmers residing along the southern end of the Morgan Telephone Company's line and business men of the village of Green Valley.

The testimony showed that to the eastward of the village of Green Valley was a large swamp extending almost to the present line of the Morgan Telephone Company. There is little prospect that there will be subscribers for telephone service residing within this area for a number of years to come. It was contended by the Cecil-Green Valley Toll Line Company that they considered the territory to the eastward of Green Valley as belonging to them and that the Morgan Telephone Company should not be allowed to build into it, but the basis of their objection was the proposed extension into the village of Green Valley. Indeed, since the Cecil-Green Valley Toll Line Company is not operating in the town of Morgan, it would have no lawful right to urge an objection to an extension of the Morgan Telephone Company entirely within the town of Morgan. The decision of the case must therefore rest upon a consideration of the needs of the residents of Green Valley and the require-

ments of the present subscribers to the Morgan Telephone Company for service to the village of Green Valley.

The subscribers of the Morgan Telephone Company testified that many of them wished to communicate with Green Valley more frequently than they desired to communicate with Oconto Falls, which is considerably more distant from the southern end of the present line of the company than is the village of Green Valley. The latter place is their trading center in large measure and is the place to which they go to ship stock and also to reach railroad facilities.

Although the village of Oconto Falls is a considerably larger community, the proximity of the present line of the Morgan Telephone Company to the village of Green Valley makes it important that the residents along that portion of the line have communication with this village for the purposes stated. The business men of the village of Green Valley likewise assert their desire for the service of the Morgan Telephone Company, because, it was testified, considerable trade from the residents along the southern portion of that line that now goes to the village of Oconto Falls rightfully belongs to the village of Green Valley and would come there if the residents in that neighborhood were permitted to have telephone connection with the latter place. At the present time no means of communication is afforded from the village of Green Valley to the lower portion of the line of the Morgan Telephone Company except over the lines of the Cecil-Green Valley Toll Line Company running to the westward, thence by a roundabout circuit to the Wisconsin Telephone Company at Oconto Falls and out over the lines of the Morgan Telephone Company. This circuitous route requires the payment of a considerable toll fee which is sufficiently deterrent to free communication to practically isolate from the village the region under consideration.

If the Cecil-Green Valley Toll Line Company were operating a telephone exchange in the village of Green Valley physical connection between the Morgan Telephone Com-

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pany and the Cecil-Green Valley Toll Line Company might be a solution to the present difficulty. The exchange of the latter company, however, is located at Cecil, several miles away. The expense of stringing an additional circuit from the Oconto Falls end of the Morgan Telephone Company's lines to connect with a new circuit of the Cecil-Green Valley Toll Line Company at Green Valley would be too great to warrant requiring the companies to make physical connection under existing conditions. The only alternative is to permit the Morgan Telephone Company to make the extension into the village of Green Valley which they propose. It is true that to secure the telephone service desired it will be necessary for the business men in the village of Green Valley to have 'phones of both companies. This results in a very high expenditure for telephone service. This hardship, they testified, they were willing to assume, since they considered it of great advantage to have direct telephone communication with the lower portion of the town of Morgan.

In this view of the matter the Commission finds itself unable to determine that public convenience and necessity do not warrant the extension of the Morgan Telephone Company's line into the village of Green Valley. It appears that the extension, if made, will be a distinct convenience to both the farmers residing in the town of Morgan now connected to the lines of the Morgan Telephone Company and to the business men in the village of Green Valley. It is difficult to say that such telephone communication is not a necessity, and there appears to be no other solution to the problem presented than to permit the extension of the lines of the Morgan Telephone Company as proposed.

Dated at Madison, Wisconsin, this fourth day of May, 1915.

IN THE MATTER OF THE APPLICATION OF THE RANDOM LAKE
TELEPHONE COMPANY FOR AUTHORITY TO EXTEND ITS
LINES INTO THE TOWN OF SHERMAN, SHEBOYGAN
COUNTY.

U-428.

Decided May 10, 1915.

Certificate of Public Convenience and Necessity for Extension of Telephone System into Occupied Territory Denied.

OPINION AND DECISION.

On April 24, 1915, the Random Lake Telephone Company filed notice with the Commission that it proposed to extend its line in the town of Sherman in Sheboygan County, south from the present terminus of the line in the southeast quarter of section 6 to the northeast quarter of section 7, to reach the residence of one Richard Schultz. The East Valley Telephone Company, which is also operating for local service in the town of Sherman, filed an objection with the Commission to the proposed extension. A hearing was held at Random Lake, Wisconsin, on May 6, 1915.

The Random Lake Telephone Company was represented by *Emil C. Thiel* and the East Valley Telephone Company by *P. G. Van Blarcom*.

The Random Lake Telephone Company has its central office in the village of Random Lake with lines extending westward and northward into the vicinity in which it is now proposed to build an extension. Two of these lines terminate within a mile of the residence of Richard Schultz. The company gives service in the village of Adell, the exchange being afforded at the village of Random Lake. The East Valley Telephone Company operates an exchange at the village of Batavia from which it serves the territory under consideration in this case. It has a line running along the south boundary of sections 7 and 8 in the town of Sherman with a branch line running northward between the sections named and serving one subscriber on the opposite side of the highway to the home of Mr. Schultz. The terminus of

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this branch is only a short distance from the house of the applicant. This company also gives service in the Village of Adell, although to a much more limited extent than does the Random Lake Telephone Company.

It was stated that the applicant for the service of the Random Lake Telephone Company transacts most of his business in the village of Adell, which is distant approximately three miles from his home. There was no testimony, however, indicating that the service of the East Valley Telephone Company would not fill all of the needs of the applicant. It having been shown that the service of this company is virtually at his door, the Commission is obliged to find, and it is hereby declared, that public convenience and necessity do not require the extension of the lines of the Random Lake Telephone Company, as here proposed.

Dated at Madison, Wisconsin, this tenth day of May, A. D. 1915.

IN THE MATTER OF THE APPLICATION OF THE ESTELLA FARMERS' TELEPHONE COMPANY FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.

U-429.

Decided May 15, 1915.

Certificate of Public Convenience and Necessity Authorizing Invasion of Occupied Field Refused — Duplication of Facilities Not Remedy for Inadequate Service.

The applicant sought a certificate of public convenience and necessity authorizing it to construct a telephone system in the town of Holcombe. The N. H. Deuel Company, the Cadott Telephone Company and the Chippewa County Telephone Company filed objections.

The applicant proposed to build its line along the highway upon which lines of both the Cadott company and the N. H. Deuel Company ran, and to connect with the switchboard of the Cornell Telephone Company in the village of Cornell, where the Chippewa County Telephone Company and the Cornell company operated competing exchanges. The N. H. Deuel Company was about to sell its line above referred to to the Chippewa County Telephone Company.

The Cadott Telephone Company connected at Cornell with the switchboard of the Chippewa County Telephone Company, through which its subscribers were able to reach Chippewa Falls and Eau Claire, and similar service would be furnished by the Chippewa County Telephone Company after the purchase of the Deuel line. Connection with Cornell, Chippewa Falls and Eau Claire was the desire of the subscribers of the applicant, and this connection could be furnished by the existing companies as well as by the applicant. Although the Cornell Telephone Company had many more subscribers in the village of Cornell than did the Chippewa County company, nevertheless, nearly all the business houses had the services of both companies.

The service of the Cadott company had been poor, but was being improved.

Held: That the construction of a competing system is not the proper remedy for poor service; a service complaint should be made against the existing company.

That as the extent of service desired by the applicant was in nowise greater than that which might be had by utilizing the facilities at hand, and as the service offered could be made entirely satisfactory, the certificate should be refused.

OPINION AND DECISION.

An application was received on March 10, 1915, from an association of farmers calling themselves the Estella Farmers' Telephone Company requesting a certificate of public convenience and necessity authorizing the construction of a telephone system in the town of Holcombe, Chippewa County, Wisconsin. A lead was proposed to be built from approximately the middle of the east line of Section 26 northward almost to the northeast corner of Section 24, thence westward to the village of Cornell with branch lines or spurs running off north and south from the main lead. Objections to the granting of the certificate were filed by the N. H. Deuel Company, the Cadott Telephone Company and the Chippewa County Telephone Company. The Cornell Telephone Company was to perform the switching for the new concern.

A hearing was held at the village of Cornell on April 8, 1915. *T. J. Connor* appeared for the Chippewa County Telephone Company, *O. J. Jensen*, for the Cadott Tele-

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phone Company, *P. J. Skolsky*, for the Cornell Telephone Company and *F. J. Jones*, for the applicant.

The village of Cornell occupies Sections 17, 18, 19 and 20 in the town of Holcombe. Both the Cornell Telephone Company and the Chippewa County Telephone Company are engaged in giving local service in that village, having entered the village and begun giving service prior to its incorporation. The Cadott Telephone Company has a line giving local service entering the town from the east and proceeding to the village of Cornell along the highway on which it is proposed to construct the lines of the Estella Farmers' Telephone Company. This line of the Cadott Telephone Company has been in existence for a number of years. The highway is also occupied by a line of the N. H. Deuel Company, which is now practically abandoned, being used for service to but one subscriber, but which it is proposed to transfer to the Chippewa County Telephone Company. It was testified that the contract for the purchase of this line was practically completed.

It would thus appear that the applicants for the certificate already had telephone service at their command. The application is based, however, on the contention that the service that is being afforded the residents in this vicinity is so poor that it in nowise meets their needs.

The line of the Cadott Telephone Company which the proposed lines would parallel is a grounded circuit. There are some 25 subscribers residing throughout the sections which the new line would traverse who are receiving service of the Cadott Telephone Company. A connection with the Chippewa County Telephone Company is furnished at the village of Cornell which enables the subscribers to reach both Chippewa Falls and Eau Claire with no additional charge. It was complained that this service was not always satisfactory and that frequently subscribers attempting to call these places were instructed to endeavor to reach them through the Cadott exchange in the village of Cadott.

The single subscriber to the line of the N. H. Deuel Company was present at the hearing and testified that the ser-

vice he was now receiving was totally inadequate. It may be freely granted that this contention is well founded. In view of the further testimony that the line was about to be taken over by the Chippewa County Telephone Company and to be rehabilitated, the existence of this line is entitled to consideration in a determination of the case. If the present plans with regard to this line are carried out they will secure to the subscribers along its route service to the 35 or 40 telephones maintained by the Chippewa County Telephone Company in the village of Cornell, and free service to the cities of Chippewa Falls and Eau Claire as well as to the rural subscribers of the Chippewa County Telephone Company. The applicants for a certificate may well afford to delay the construction of the lines they propose to build until the assurance that this existing line will promptly be put in serviceable condition can be tested.

It is not necessary, however, to rest on indefinite assurances that service will be received at some time in the future in order to reach the conclusion that is obtained in this case. It was shown that the proposed line would parallel almost throughout its length existing lines of the Cadott Telephone Company. The service of the Cadott company includes the interchange of service with the Chippewa County Telephone Company at Cornell, to which reference is hereinbefore made, service to the village of Holcombe to the north, and to the villages of Cadott and Boyd to the southeast, including the rural service given by the company throughout its system. It may be taken as established that it is the desire of the applicants to secure connection with the village of Cornell and with the cities of Chippewa Falls and Eau Claire. The testimony on which this conclusion is based was unvarying. If the certificate were issued and the proposed line were built, a connection would be given with the Cornell Telephone Company at Cornell, thus affording connection with all of the 'phones of the latter company in that village and giving the connection over the lines of the Wisconsin Telephone Company with the two cities mentioned. This is identically the service

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that is now afforded these applicants by the Cadott Telephone Company and the Chippewa County Telephone Company. It is true that the number of subscribers to the service of the Cornell Telephone Company in the village of Cornell very greatly exceeds the number of subscribers of the Chippewa County Telephone Company in that village. It was shown, however, that nearly all of the business houses in Cornell were obliged to have the service of both the Cornell Telephone Company and the Chippewa County Telephone Company by reason of the peculiar competitive condition that exists. For this reason we are unable to see how more could be afforded in the way of telephone communication with this village than is at present afforded by the Cadott Telephone Company. This being true, it cannot seriously be contended that the new system, if permitted to be built, would give the subscribers any advantage over those now enjoyed so far as communication with Chippewa Falls and Eau Claire is concerned.

It may be admitted that the condition of the lines of the Cadott Telephone Company is not such as to be desired and that the service afforded is thus somewhat impaired. The manager of the company testified, however, that he was proceeding with all diligence to metallicize his lines and to improve the service being given in this neighborhood. A large portion of his system has already been rebuilt. But, if nothing were to be hoped in the way of voluntary improvement of the service of the Cadott Telephone Company, before undertaking such a radical move as the construction of a competing system it would be advisable for the subscribers to exhaust the legal means now at their command to secure improved service conditions. The Commission has frequently stated that a service complaint against an existing company is the proper method to raise for consideration the service that is being given. We deem it unnecessary to go over that ground. If the service being afforded by any company is so hopelessly bad that there is no possibility of making it adequate, or if a company is in such a weakened financial condition that it appears impossible for it to give

the service it has undertaken to give, or if there has been a continued and wilful disregard of public requirements in the way of service, or if a company against which a service order has been issued fails to comply with the requirements of such order, then an application for a certificate of public convenience and necessity may be proper and final resort.

It has not been disclosed that any of these conditions precedent prevail in the instant case. The applicants here have the prospect of securing the service of the Chippewa County Telephone Company at no distant date. At the present time they have at hand the service of the Cadott Telephone Company. It has not been shown that the extent of service desired by the applicants is in any wise greater than that which may be had by utilizing the opportunity already at hand, nor that the service now offered them cannot forthwith be made entirely satisfactory.

For these, and other reasons, it is deemed that the certificate for which application is made should be refused.

Dated at Madison, Wisconsin, this fifteenth day of May, 1915.

IN THE MATTER OF THE INVESTIGATION ON MOTION OF THE
COMMISSION OF RATES CHARGED FOR TOLL SERVICE OVER
THE LINES OF THE BARNES TELEPHONE COMPANY AND
THE IRON RIVER TELEPHONE COMPANY, OF THE INADE-
QUACY OF THE SERVICE OF THE BARNES TELEPHONE COM-
PANY, AND FAILURE TO GIVE SERVICE.

U-430.

Decided May 18, 1915.

**Reduction of Toll Rates Ordered — Optional Flat or Message Rates
Between Exchanges Ordered — Division of Interline Revenue
Fixed — Construction of Trunk Line Ordered.**

OPINION AND DECISION.

This case has arisen from complaints of parties living near Iron River regarding the charges for Iron River serv-

ice via Barnes Telephone Company's system, and the failure or refusal of the Iron River Telephone Company to extend its lines so as to furnish Iron River service directly to such parties. The Barnes Telephone Company's system appears to consist of two grounded lines extending in a general southerly direction from Iron River and connected to a small switchboard situate at Barnes, through which service is exchanged between the lines constituting the Barnes system. There is also a connection at Iron River with the system of the Iron River Telephone Company. The Barnes company charges \$12.00 per year for service over its own system and has a graduated toll charge of from 10 cents to 25 cents per message for messages into Iron River, the rate varying according to the distance of the telephone originating the message from that place. On messages from Iron River to Barnes subscribers, there are similarly graduated charges, half of the revenues from which are retained by the Iron River Company as compensation for handling Barnes messages.

Complaints filed with the Commission originally covered the failure of the Iron River Telephone Company to extend its service to parties living about two and one-half miles from its lines and about half a mile from the lines of the Barnes company. This cause of complaint, however, seems to have grown out of conditions as regards rates, the proper adjustment of which should remove any urgent necessity which may have existed for the extension of the Iron River lines into the territory in question.

As we understood the situation, subscribers of the Barnes company living near Iron River, have considerable need for Iron River service, but the message rates now in effect for such service have a prohibitory tendency as regards its use. The higher message charges for messages to or from Barnes subscribers situated a relatively long distance from Iron River also seem to keep the number of calls down to a rather small number.

The last report filed by the Barnes Telephone Company seems to be so much at variance with some of the facts brought out at the hearing that little or no use can be made of it in this case. The number of subscribers reported, as of December 31, 1914, was 23, so that revenues from flat rates alone for the 18 month period ended on that date, assuming that the number of subscribers was the same throughout the period, would have been \$414. We have no information as to the revenue for the 18 months from message rates, but apparently the total revenue from flat and message rates would be very much greater than the 18 months' revenues as reported, \$349.90. Because of the lack of complete and accurate information, it is very hard to determine what should be the disposition of this case, but we believe the situation should be made such that subscribers on the Barnes lines may receive Iron River service upon either a flat or message rate basis as the majority of them may determine. A rate of 10 cents for a message to Iron River from any Barnes station outside of a radius of six miles from the central office in Iron River and a rate of 5 cents for a message from any Barnes station within such radius seem to be reasonable. For flat rate service into Iron River a rate of \$3.00 per subscriber is considered reasonable. There may be operating difficulties in the way of the use of optional message or flat rates from Iron River to the Barnes lines, but it is believed that a rate of 5 cents for a message from Iron River to a Barnes station within a radius of six miles of the Iron River central office or 10 cents to any other station on the Barnes system will be a fair rate.

Experience may indicate the necessity of some adjustments in these rates, but until such time they will be made effective by this order.

It is, therefore, ordered,

(1) That the Barnes Telephone Company abandon its schedule of message rates for messages from points on its

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line to Iron River and substitute therefor the following schedule:

10 cents per message for messages originating outside of a radius of six miles from the central office of the Iron River Telephone Company.

5 cents per message for messages originating within a radius of six miles from the central office of the Iron River Telephone Company.

Message rates as fixed in this section shall continue until such time as the majority of subscribers of the Barnes Telephone Company shall exercise their option to receive service under the flat rate fixed by Section 2 of this order.

(2) That whenever the majority of the subscribers of the Barnes Telephone Company shall so elect, the message rates as fixed in Section 1 of this order shall be abandoned and unlimited service with Iron River shall be furnished at the rate of \$3.00 per telephone per year.

(3) That the Iron River Telephone Company shall apply the following rates in lieu of any present rates for service from Iron River to stations on the Barnes Telephone Company's lines:

10 cents per message for each message from Iron River to stations of the Barnes Telephone Company outside of a radius of six miles from the Iron River central office.

5 cents per message for each message from Iron River to stations of the Barnes Telephone Company within a radius of six miles from the Iron River Central office.

It is further ordered, (a) That the Iron River Telephone Company shall retain 5 cents for each outgoing message and that for each 10-cent outgoing message the Iron River Telephone Company shall pay 5 cents to the Barnes Telephone Company.

(b) That the Barnes Telephone Company shall retain all revenues from message rates for messages to Iron River originating on its lines.

(c) That when the flat rate provided in Section 2 of this order for traffic originating on its lines is put into effect, the Barnes Telephone Company shall pay to the Iron River

Telephone Company such amount as, added to the revenue obtained by the Iron River Telephone Company from outgoing messages from Iron River to stations of the Barnes Telephone Company, will make up a total equivalent to \$3.00 per year for each subscriber of the Barnes Telephone Company.

It is further ordered, That when the flat rate fixed by Section 2 of this order is placed in effect the Barnes Telephone Company shall within sixty days string a clear line from its exchange at Barnes to Iron River and the Iron River Telephone Company shall connect this line to its switchboard at Iron River, and Iron River messages to and from Barnes Telephone Company subscribers who cannot call Iron River directly, shall be routed over this line.

It is further ordered, That the Barnes Telephone Company and the Iron River Telephone Company shall keep accurate records of all messages to which the message rates fixed in this order shall apply, and settlements between the above named companies in accordance with the terms of this order shall be made quarterly on the first day of January, April, July, and October.

Dated at Madison, Wisconsin, this eighteenth day of May, 1915.

WONEWOC TELEPHONE COMPANY v. LAVALLE TELEPHONE COMPANY.

U-431.

Decided May 21, 1915.

**Extension of Line to Serve Subscriber Located in Border Territory
Between Two Companies Approved.**

OPINION AND DECISION.

Complainant alleges that the respondent telephone company has made an extension of its telephone lines for the giving of local telephone service to a subscriber in the town

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of Summit, Juneau County, Wisconsin, without giving notice to the complainant and to the Commission as is required to be done under the provisions of Chapter 610 of the Laws of 1913. Notice of investigation was issued February 24, 1915, and the hearing was held at LaValle, April 2, 1915. *E. F. Baley* appeared for the complainant and *A. F. Dargel* for the respondent.

It appears that the party to whom the extension in question was made has rented a farm approximately midway between Wonewoc and LaValle, and that the previous occupant of the premises had taken telephone service from the Wonewoc Telephone Company. The present tenant on this farm has occasion to talk rather frequently to persons at Reedsburg, and the La Valle Telephone Company is in a position to furnish him the desired service without toll charge, but the Wonewoc Telephone Company has a toll charge for messages to Reedsburg.

It appears further that the LaValle Telephone Company had a line reaching to the farm in question and furnishing service to a neighbor approximately across the road, so that the only construction that had to be made to furnish service to the subscriber concerning whom this action has arisen was the building of a line from the road to the house, and that in building this line the poles which the former occupant of the house had set to reach the line of the Wonewoc Telephone Company could be used for carrying the wire of the LaValle Company from the road to the house.

The Wonewoc Telephone Company had, of course, discontinued service when the former occupant of the premises vacated. The LaValle company appears to have its line at least as close to the premises in question as does the Wonewoc company. The only loss the Wonewoc Telephone Company will sustain by permitting the LaValle Telephone Company to give service to this subscriber is the loss of a short piece of wire line costing perhaps a few dollars. There is no thought of invasion of territory distinctly belonging to the Wonewoc Telephone Company.

The applicant for service being situated in the twilight zone between the two companies it seems only fair to permit the extension to the residence to remain. There can be no doubt that the Commission would have allowed the line to be built had notice been given in the regular manner.

The case is therefore dismissed.

Dated at Madison, Wisconsin, this twenty-first day of May, A. D. 1915.

PART II.

SELECTED COMMISSION ORDERS, RULINGS AND DECISIONS OF INTEREST TO TELEPHONE AND TELEGRAPH COMPANIES.

IDAHO.

Public Utilities Commission.

IN THE MATTER OF THE APPLICATION OF THE BEAVER RIVER
POWER AND LIGHT COMPANY, A CORPORATION, FOR A CER-
TIFICATE OF CONVENIENCE AND NECESSITY IN THE CITY OF
POCATELLO.

Case No. F-43 — Order No. 212.

Decided March 24, 1915.

**Certificate of Public Convenience and Necessity for Construction of
Electrical Transmission System in Occupied Territory Denied —
Service of Established Company Found Adequate — Pro-
posed Rates of Applicant Not a Material Reduction.**

A rehearing was had of the application of The Beaver River Power and Light Company for a certificate of public convenience and necessity, authorizing it to construct and operate an electrical transmission system in certain territory which the Southern Idaho Water Power Company was purporting to serve, which application the Commission had previously denied.*

The rule of law announced in the *Idaho Power and Light Company* case† as to the construction of Section 48 a-b-c of the Public Utilities Law was affirmed without further comment.

Held: That the service rendered by the Southern Idaho Water Power Company was adequate at the time of the threatened competition.

That the reduction in rates promised by the applicant was not a material reduction.

That the territory in question was completely served by the existing utility.

* Noted in Commission Leaflet No. 37, p. 564.

† See Commission Leaflet No. 39, p. 920.

That the applicant could not furnish electrical energy at less cost than the existing utility.

That the application should be denied.

Payment of Percentage of Gross Revenue to City in Accordance with Franchise Condemned.

The ordinance granting the applicant its franchise provided that after two years from the passage of said ordinance, the applicant company should pay to the city annually a certain percentage of its gross annual revenues.

Held: That there is no reason in justice or equity why the users of a commodity of a certain public utility should be required to pay such a rate as will enable that utility to pay to the city a certain per cent. of its gross earnings to be used by the city for general purposes; that if funds of that kind are needed a tax should be levied on all of the property within the city's boundaries.

Dissenting Opinion of Commissioner Freehafer.

Commissioner Freehafer dissented from the decision of the majority in denying the certificate of public convenience and necessity although agreeing with the majority in condemning that portion of the franchise ordinance providing for an annual payment to the city. The dissenting Commissioner agreed that the case should be decided in accordance with the rule set forth in the *Idaho Power and Light Company** case, but considered that on the facts in this case the certificate should have been granted.

Held: That the Southern Idaho Water Power Company was not rendering adequate service in the city of Pocatello and that the territory in question was not completely served at the time of the threatened competition by the applicant company.

That the rates charged by the Southern Idaho Water Power Company at the time of the threatened competition were not reasonable.

That the rates offered by the applicant were 18 per cent. lower than those in effect when competition was threatened, and that a reduction of 18 per cent. is a material reduction.

That competition is desirable as the stimulus therefrom will create new and constantly increasing demands for service, all with very little duplication of facilities.

That the fact that the applicant had secured its franchise prior to the passage of the Public Utilities Law and pursuant to the securing of said franchise, had expended large sums of money in its enterprise, should cause the Commission to be somewhat lenient.

That the certificate should be granted.

* See Commission Leaflet No. 39, p. 920.

APPEARANCES:

Jess B. Hawley and *H. R. Waldo*, for The Beaver River Power and Light Company.

S. H. Hays, for the Southern Idaho Water Power Company.

OPINION AND ORDER.

On November 7, 1914, this Commission rendered its decision* in the above entitled case, denying the applicant the certificate prayed for (see order No. 170). Thereafter petition for rehearing was filed by the applicant on November 28, 1914, and on December 9, 1914, an order* granting the rehearing was made and entered. The rehearing began on the thirty-first day of December, 1914, and continued from day to day, finally being completed on January 4, 1915. Oral arguments were made before the Commission on January 8, 1915, and the matter finally resubmitted.

* * * * *

This case was heard upon rehearing at the same time as Case F-40, being the application of the Idaho Power and Light Company for a certificate of convenience and necessity to enter the Twin Falls territory, which was decided† upon a rehearing on January 16, 1915, and the same issues are involved in this case as in that. The rule of law announced in that case as to the construction of Section 48-a-b-c is hereby reaffirmed without further comment.

Let us now apply the facts in this case to the rule therein announced and see if they fall within said rule.

The questions which are presented for consideration are as follows:

(1) Was the Southern Idaho Water Power Company‡ rendering adequate service in the city of Pocatello at the time of the threatened competition by the applicant herein?

(2) If the service was adequate, were the rates reasonable?

* Noted in Commission Leaflet No. 37, p. 564.

† See Commission Leaflet No. 39, p. 920.

‡ The company already in the field.

(3) Was and is the territory in question completely served by the Southern Idaho Water Power Company?

(4) Can the applicant herein furnish electrical energy at a less cost to the consumer in the city of Pocatello than the existing utility.

The evidence shows the present developed capacity of the plant of the Southern Idaho Water Power Company at American Falls to be about 6,600 horse-power, with an estimated future capacity of something like 17,000 horse-power at low water, and a maximum of 23,000 horse-power at high water; that the estimated peak load for the city of Pocatello is something like 1,660 horse-power and that this estimated peak load of the company for all the territory served would not exceed 2,500 horse-power. This would leave a present reserve capacity of the plant in its present condition of 4,100 horse-power or something over 160 per cent. of the present demand on the plant. This is sufficient to take care of the demand in the present territory of the Southern Idaho Water Power Company for years to come. Additional units could be installed at any time the demand required. This demonstrates the fact that the Southern Idaho Water Power Company has sufficient installation to supply all present and anticipated future demands for some time to come. It also appears from the record that there is very little complaint as to the character and class of the service furnished. The applicant spent considerable time and introduced a volume of evidence tending to show that the citizens of Pocatello desired competition in the electrical business, and we believe the people generally in that city desired to see competition. The reason the people desired competition was that they believed it would reduce the rates. This is an erroneous inference. If another company were permitted to go into this city of Pocatello and install its plant and the two companies were permitted to earn a reasonable return upon their investment, the rates would necessarily have to be raised instead of lowered, provided, of course, that the present rates are not now higher than necessary to permit the present company to earn a reason-

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able return upon its investment. This question of the reasonableness of the present lighting and power rates is still pending before this Commission and an investigation and determination of that question will be made as soon as the hydro-electric public utilities of Southern Idaho can be appraised. We, therefore, find that the Southern Idaho Water Power Company was rendering adequate service in the city of Pocatello at the time of threatened competition by the applicant.

We now come to the question of the reasonableness of rates. Prior to the enactment of the Public Utilities Law and until the entering of the order by this Commission hereinafter referred to, most of the rates charged by the Southern Idaho Water Power Company were flat rates and in some cases very high and in other cases very low. Under the order made by the Commission on the second day of April, 1914, the rates for lighting were reduced by the Commission from a maximum of 11 cents to a maximum of 9 cents, with a 10 per cent. discount for cash in each case. This would amount to an apparent net reduction of only 1.8 cents per kilowatt hour. Although the Southern Idaho Water Power Company had in effect a lighting rate with a maximum of 11 cents per kilowatt hour, yet practically all of the patrons of the company were furnished electrical energy for all purposes upon a flat rate basis, and we are unable to tell anything near the exact decrease in rates, if any, from the old flat rates to the rates ordered by this Commission on April 2, 1914. Since the order of the Commission last referred to, fixing the rate in that territory, we have had numerous and divers complaints from citizens of Pocatello, claiming that their lighting bills had increased under the new rates. These customers, we believe, were receiving a decided preference in rates under the old flat rate plan by reason of a political pull or otherwise, and were not paying their just proportion of the burden. We, therefore, conclude that the order of the Commission made on the second day of April, 1914, resulted in a slight decrease in rates from what they were under the old flat rate plan.

In the ordinance of the city of Pocatello, granting to the applicant a franchise to do business in said city, we find a schedule of rates wherein the maximum lighting rate was fixed at 10 cents per kilowatt hour, without any discount. However, the evidence shows that the applicant company was willing to furnish power for lighting at a maximum of 9 cents per kilowatt hour, with a discount of 10 per cent. if paid within a certain time. There is a special provision in the franchise which possibly has some bearing on the maximum rates fixed in the ordinance granting the franchise and that is this: Section 9 of the ordinance provides:

"Section 9. As a further consideration for the granting of this franchise, said The Beaver River Power Company, its successors or assigns, from and after the expiration of two years from the passage, approval, and publication of this ordinance and until the expiration of twenty years from such passage, approval and publication hereof, shall pay annually to said city of Pocatello an amount equal to 1 per cent. of the gross annual revenue derived by said grantee, its successors or assigns, from the sale of electric current within such city and for the remaining period of the term thereof, after the expiration of such twenty-year period above mentioned, said grantee, its successors or assigns, shall pay annually to said city an amount equal to 1½ per cent. of such gross annual revenue."

This provision of the ordinance providing for the payment to the city of a certain per cent. of the gross receipts of the company is not looked upon with favor by this Commission. There is no reason in justice or equity why the users of the commodity of a certain public utility should be required to pay such a rate as to enable the public utility to pay to the city a certain per cent. of its gross earnings, to be used by the city for general purposes. If funds of that kind are needed a tax should be levied on *all of the property* within the city's boundaries.

We are satisfied that the applicant herein promised to furnish electrical energy at slightly reduced rates from the rates charged under the old flat rate plan, but exactly what that reduction is we are not prepared to say as no direct evidence was offered on that point. We feel that this proposed reduction in rates by the applicant herein is not such

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a reduction as to warrant this Commission in permitting the applicant to enter this field. The reduction must be a *material* reduction.

In the case of *In Re Application of Oro Electric Corporation*,* 2 C. R. C. R., 748, the California Commission announced this rule:

“The Commission does not look with favor on the practice of merely ‘shading’ existing rates. A utility desiring to enter a field being served by another utility of like character should understand that it can not make out its case by simply figuring out rates slightly lower than those of the existing utility, but that it must present to the Commission evidence clearly showing what rate it can reasonably give to the public and at the same time secure for itself a reasonable return on its value of the property actually used and useful for the public purpose.”

The above rule is a reasonable rule and the same is adopted by this Commission.

The third proposition to consider is: Was and is the territory in question completely served by the Southern Idaho Water Power Company? The evidence in this case shows that the applicant desired to enter the city of Pocatello and none of the other towns or villages around in that community. The plant of the applicant seems to be designed upon the plan of taking care of business in the city of Pocatello only. The distribution lines of the Southern Idaho Water Power Company were extended all over the city and the company was, and is, now taking care of all demands of all of the citizens.

We now come to the last proposition: Can the applicant herein furnish electrical energy at a less cost to the consumers in the city of Pocatello than the existing utility?

* * * * *

The evidence in this case falls far short of proving any such state of facts.

It is, therefore, ordered, That the application herein be, and the same is, hereby denied and the petition dismissed.

Done in open session at Boise, Idaho, this twenty-fourth day of March, 1915.

* Syllabus printed in Commission Leaflet No. 19, p. 206.

DISSENTING OPINION.

FREEHAFFER, *Commissioner*:

I cannot agree with the conclusion of the majority opinion that applicant company should be denied a certificate of public convenience and necessity to enter the Pocatello field, and because of the importance of Section 48 of our Public Utilities Law as affecting the development of the natural resources of our State, and the keen interest of the public in the matter of competition, I feel it my duty to explain my views as to the facts in this case and their application to the rules of law as heretofore announced by this Commission.

The decision* of this Commission on the application of the Idaho Power and Light Company to enter the Twin Falls field, being Case No. F-40, which was rendered upon a rehearing, on January 16, 1915, asserts the principle of law that "when we adopt the laws of another State, we also adopt that State's interpretation of said laws," and then proceeds to quote liberally from the case of *Pacific Gas and Electric Company v. Great Western Power Company*,† 1 Cal. R. C. R. 203, decided June 18, 1912, almost a year prior to the enactment of our Public Utilities Law, and our law as to the questions herein involved is almost a verbatim copy of the California law.

I agree as to the soundness of the principle of law so asserted and also agree with the majority in their adoption of the rules of law quoted from the California case, *supra*, but I cannot reconcile the facts in this case, as I see them, with the conclusion reached by the majority.

(1) Was the Southern Idaho Water Power Company rendering adequate service in the city of Pocatello and was the territory in question completely served at the time of the threatened competition by the applicant company?

Many witnesses were called upon to give their views as to the desirability of competition in the Pocatello field and

* See Commission Leaflet No. 39, p. 920.

† See Commission Leaflet No. 8, p. 63.

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their unanimous demand was for competition, and this is at least a strong indication that the service that was being rendered by the existing utility was not all that could be desired.

Quoting from *Pacific Gas and Electric Company v. Great Western Power Company*,* *supra*, page 209:

"It certainly is true that where a territory is served by a utility which has pioneered in the field, and is rendering efficient and cheap service and is fulfilling adequately the duty which, as a public utility, it owes to the public, and the territory is so generally served that it may be said to have reached the point of saturation as regards the particular commodity in which such utility deals, then certainly the design of the law is that the utility shall be protected within such field; but when any one of these conditions is lacking, the public convenience may often be served by allowing competition to come in."

I cannot believe from the evidence in this case that the Pocatello field had reached the point of saturation, else some witnesses could have been found to testify that they were satisfied with the service furnished by the existing utility. The facts show that the existing utility had made very little, if any, effort to introduce electrical appliances or develop new business.

Quoting again from the California case, *supra*, page 211:

"If, however, a territory is completely served and the utility had, to the best of its ability, given fair treatment to its patrons, as already intimated, this Commission will be slow to permit a competitor to come into its territory."

I cannot feel that the existing utility was treating its patrons fairly at the time of the threatened competition. The old flat rates maintained by the Southern Idaho Water Power Company were grossly discriminatory and I hold the utility more culpable for granting and maintaining such discriminatory rates than if it had imposed excessive rates, but uniform to all its patrons.

I am very much in doubt as to the adequacy of the service in the Pocatello field, but I hold that the existing

* See Commission Leaflet No. 8, p. 63.

utility was not found with clean hands at the time of the threatened competition as to fair treatment of all its patrons.

(2) Were the rates charged by the Southern Idaho Water Power Company reasonable at the time of the threatened competition?

A franchise was granted the applicant company on May 5, 1913, at which time the old flat rates of the existing utility were in effect, but some of its customers were on a maximum meter rate of 11 cents per kilowatt hour with 10 per cent. discount for cash and the existing utility maintained these rates until it was compelled to desist by the Commission's order of April 2, 1914, which put into effect a maximum rate of 9 cents per kilowatt hour with a 10 per cent. discount for cash.

If the flat rates were not uniform, and the majority opinion admits that they were grossly discriminatory, the only fair basis of comparison is the maximum rates, which shows a reduction of 1.8 cents per kilowatt hour on the net rates, or a little over 18 per cent.

I agree with the majority opinion that "the Commission does not look with favor on the practice of merely 'shading' existing rates," but I believe that a reduction of 18 per cent. is such a "positive and material advantage to the public," as this Commission asks for in Case No. F-40,* cited *supra*.

I agree with the majority opinion that the provision of the franchise secured from the city of Pocatello by the applicant company, whereby the city was to receive a certain per cent. of the gross annual revenue of the applicant company was not a wise provision, as it would result in discrimination as between taxpayers of the city by requiring users of electrical current furnished by that particular company to provide funds for the use of the whole city, but it is within the power of this Commission to eliminate that provision, and a reduction in rates equal to the proposed donation to the city should be ordered by the Commission.

* See Commission Leaflet No. 39, p. 920.

As the rates have been reduced since the threatened competition and the reductions have been accepted by the existing utility in an amount, which in my judgment is a "positive and material advantage to the public," I find that the rates of the Southern Idaho Water Power Company were not reasonable at the time of the threatened competition. If the facts submitted in the majority opinion as to the comparative cost of generating current by the existing utility and the applicant company are correct, and the applicant company can furnish the service at the rates now in effect in the territory it seeks to enter (which it agrees to do and testifies it can do), then the existing utility is earning, or is able to earn, an unreasonably large return of profit on its investment, and the figures submitted in the majority opinion show that the cost of production by the applicant company, as indicated by its testimony, is 50 per cent. higher than the cost of production by the existing utility.

But the actual reduction of rates is not the only advantage that will accrue to the community from competition. My judgment as to the desirability of competition in this field is not based upon the theory that the new utility will simply go into the field and divide the existing business. I believe the stimulus of competition will create new and constantly increasing demands for service. The admission of the applicant company will give the city of Pocatello a new system of underground wires, lower rates, prompt service, courteous treatment, active effort to educate the public in new uses of electricity—all with very little duplication of equipment. Also, while making due allowance for enthusiasm and local pride of the many witnesses who testified to their faith in the rapid growth and development of the city of Pocatello, I believe that the growth of the city alone will result in great and constant increase in the demand for electrical current.

Quoting further from the California case, page 211:

"We have no doubt that as a rule in this State the going in of a second utility will develop a considerable amount of new business, while leaving

an ample field for the existing utility. Such being the case, the instances wherein this Commission will deny a certificate of public convenience and necessity by reason of the fact that another utility is already in the field will be comparatively rare."

I do not believe that this case presents one of the rare instances.

In the case just quoted, at page 217, the California Commission says:

"At the time of the passage of the Public Utilities Act, various enterprises were in the process of construction, and steps had been taken toward entering the field which might not have been taken had the Public Utilities Act been in effect. We might very well lay down a different rule for a new utility that now desires to begin operation and that has not invested large sums of money on the faith of its right to do business in a competitive field."

The fact that the applicant company had secured a franchise prior to the time our utilities law became effective, and that pursuant to the securing of such franchise had expended large sums of money in its enterprise, is an added fact that should lead us to treat it with more liberal consideration than would be accorded a new utility asking admission to a field already occupied. However, I will not hold that applicant company may establish itself in the heart of the city of Pocatello, and, as it were, take only the cream of the business. Section 48(c) of the Public Utilities Act provides:

"The Commission shall have power, after hearing involving the financial ability and good faith of the applicant and the necessity of additional service in the community, to issue said certificate, as prayed for, or to refuse to issue the same, or to issue it for the construction of a portion only of the contemplated street railroad, line, plant or system, or extension thereof, or for the partial exercise only of said right or privilege, and may attach to the exercise of the rights granted by said certificate such terms and conditions as in its judgment the public convenience and necessity may require."

I would impose conditions on the applicant company requiring it to extend its lines and furnish all classes of service now being furnished by the existing utility over the entire field.

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I am not incredulous as to what may be accomplished in generating electrical energy by the Diesel engine. In fact I have long since ceased to be incredulous as to any claims made by inventors, and in the light of all evidence before me in this case, I very much desire that the Diesel engine be given a trial in Idaho.

I agree with the rule announced by this Commission in Case No. F-40,* *supra*, that "every case must be decided upon its own particular merits."

I believe all cases under Section 48 of our Public Utilities Law should be determined by answering the question—*What will be the ultimate effect upon the consuming public?*

In view of the holdings of the California Commission in *Pacific Gas and Electric Company v. Great Western Power Company*,† *supra*, and the rules adopted by the Idaho Commission in Case No. F-40,* heretofore quoted, and in the light of all evidence before me, I hold that a certificate of public convenience and necessity should be granted to the applicant company as applied for in its petition.

* See Commission Leaflet No. 39, p. 920.

† See Commission Leaflet No. 8, p. 63.

MAINE.

Public Utilities Commission.

IN THE MATTER OF THE APPLICATION OF THE BLACK STREAM ELECTRIC COMPANY FOR AUTHORITY TO ISSUE SECURI- TIES.

U-25.

Decided May 13, 1915.

Issue of Stock at Less than Par by Newly Formed Corporation Condemned.

The Black Stream Electric Company, a newly formed corporation, sought authority to issue 1000 shares of its capital stock of the par value of \$10.00 per share to be sold at not less than \$9.00 per share, and further sought authority to issue, subsequent to the issue of the stock, 50 of its 6 per cent. mortgage bonds of the par value of \$100 each, to be sold at not less than par.

Held: That when a new utility is being financed and all stockholders have an opportunity to come in on the same terms, the certificates of stock should mean precisely what they say. Then the subscribing stockholder knows that he has discharged his entire liability once for all; a subsequent purchaser knows that the corporation has received full value for the certificate which he purchases; the public knows that the corporation has received full value for all certificates issued. The actual value of the assets of the utility thus keeps pace with the book value so far as the business foresight and capacity of its promoters can make it. It is no real hardship to require subscribers to the capital stock of new utilities to pay in full for their stock, because they are in fact only partners in the enterprise, and if all pay alike they own the same respective portions of the entire plant, whether ten men pay each \$900 or \$1000 for one-tenth of the ownership of a \$10,000 corporation.

That, therefore, the stock of the applicant should be sold at not less than par.

That the Commission expresses no opinion concerning additional issues of capital stock by corporations already doing business.

That the applicant should be authorized to issue its bonds and to sell the same at not less than par after it has issued and sold the capital stock hereby authorized.

APPEARANCES:

Ellery Bowden, Esq., of Winterport, for petitioner.

OPINION AND ORDER.

Petition of The Black Stream Electric Company, a corporation organized under the general law to generate and distribute electricity and gas and distribute water in the towns of Carmel, Hermon, Etna and Levant, for authority to issue 1,000 shares of its capital stock of the par value of \$10.00 per share to be sold at not less than \$9.00 per share and 50 six per cent. mortgage bonds of the par value of \$100 each to be sold at not less than par.

Hearing held May 11, 1915. Notice ordered by publication and proved as ordered.

The Black Stream Electric Company now proposes to operate in the towns of Carmel, Hermon and Levant. It has not yet issued any capital stock, acquired any property, or begun construction. Its total authorized capital stock, all common, is \$10,000. It submitted carefully prepared data showing the nature and extent of its proposed operations, its probable cost of construction, income and operating expenses, with population, density of population, valuation, number of takers promised, and statistical comparison with companies now operating in similar localities in the State.

The evidence tends to show that the company has a fair field for operation and a reasonable prospect of success. The petitioner does not expect to offer its bonds for sale until its capital stock shall have first been subscribed and paid in in cash.

It asks for the right to sell this stock at less than par, at 90. While the petitioner did not strenuously press this request, we feel that this may be an opportune time for the Commission to state its attitude in this regard. The fact that the petitioner is a small corporation and not insistent upon this point might of itself appear to make an extended statement unnecessary. But it is the first instance in which the Commission has had to act upon a request to issue stock at less than par, and the policy which we have determined upon will be applicable to all cases within the limitations hereinafter laid down.

The law of the State does not prohibit such stock from being issued and sold at less than par. It is content that stock so issued carry with it certain liabilities of the subscribers to such stock in case of failure of the corporation to meet its obligations to creditors. With this general legislative policy this Commission has no concern officially. Nor will the Commission at this time attempt to fix any rule governing additional issues of capital stock by corporations already doing business, when new stockholders must share according to the number of their shares with those who previously acquired their holdings under different conditions. Another course may or may not be justifiable in such instances, and will be considered when the exigency arises.

But we see no reason why, when a new utility is being financed and all stockholders have an opportunity to come in on the same terms, the certificates of stock should not mean precisely what they say, in other words, should not speak the exact truth. No one is then deceived. No one is in doubt. The subscribing stockholder knows that he has discharged his entire liability, once for all time. A subsequent purchaser knows that the corporation has received full value for the certificate he purchases. The public knows that the corporation has received so much real value. The actual value of the assets of the utility thus keeps pace with the book value so far as the business foresight and capacity of its promoters and managers can make it.

On the other hand, if the stock is sold at less than par, the balance sheet of the corporation is likely to be misleading from the start. A bookkeeping liability in excess of actual value is created, and some fiction usually practiced to make the assets and liabilities balance. This may, or may not, be overcome in time by successful management and conservative practices in the payment of dividends.

In the meantime the stock changes hands. Persons are induced to purchase on the supposition that the real assets are equal to the book assets. Then, if a question of rates arises and is adjusted, as it must be, on the actual value of the plant, such stockholders are likely to realize for the

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first time that their stock does not represent what it purports to represent. This practice has accounted in large measure for serious losses to innocent stockholders, and if persisted in now that rates and charges are subject to regulation, is likely to be even more disastrous.

Nor can it be any real hardship to require subscribers to the capital stock of new utilities to pay in full for their stock, because they are in fact only partners in the enterprise, and if all pay alike they own the same respective portions of the entire plant whether ten men pay each \$900 or \$1,000 for one-tenth of the ownership of a \$10,000 corporation.

We think, therefore, that such stock should be sold at not less than par.

Now, therefore, after notice, full public hearing and mature consideration of the evidence, we find that the capital to be secured by the issue of said stocks and bonds is required in good faith for purposes enumerated in Section 35, Chapter 129, Public Laws of 1913, and that the issue thereof under the conditions hereinafter imposed is consistent with public policy, and

It is ordered and decreed, 1. That the Black Stream Electric Company be, and hereby is, authorized to issue its capital stock to the amount of \$10,000 in 1,000 shares of common stock of the par value of \$10.00 per share, and to sell the same for cash at not less than par.

2. When it shall have so issued and sold its capital stock to said amount, and reported the same to this Commission as hereinafter directed, it is authorized to issue its 6 per cent. bonds to the amount of \$5,000 in denominations of \$100 each to be numbered consecutively from 1 upwards, secured by mortgage of its franchises and properties, and to sell the same at not less than par.

3. The proceeds of said sales shall be applied to the acquisition and construction of its plant, pole lines, equipment and other property useful, and to be used, in the transaction of its business, under the terms of its charter; and any surplus above the amount required for said purposes

shall be reserved for future acquisitions, extensions and betterments thereof, or otherwise disposed of under the direction of this Commission.

4. The petitioner shall report to this Commission its doings hereunder in detail, supported by the oath of one of its principal officers, within twenty days after the first day of September, 1915, and within twenty days after the first day of each alternate month thereafter until it shall have ceased to take any action under this order.

Given under the hand and seal of the Public Utilities Commission, this thirteenth day of May, A. D. 1915.

IN THE MATTER OF THE APPLICATION OF BANGOR POWER COMPANY FOR AUTHORITY TO ISSUE SECURITIES.

Decided May 14, 1915.

Issue of Bonds to Reimburse Treasury for Money Advanced Authorized.

Held: That should a utility expend from its surplus for the acquisition of new property or for extensions and betterments, money which it apparently does not then need as working capital, with no present intention of replacing it except from earnings, and later, under changed conditions or business depression, seek to restore it by issuing bonds to reimburse the treasury, it is doubtful whether authority to do so could be legally granted.

That when, as in this case, during the course of the acquisition or construction of plant, a utility uses available funds not immediately required for current normal expenses and charges, in the expectation of reimbursing its treasury when the work is completed or when such funds are required for current purposes, this amounts in effect to a temporary deflection or borrowing of money intended for working capital and to a certain extent impressed with a trust or obligation that it will be so available. The issue of bonds to reimburse the treasury for money thus borrowed is not inconsistent with the Public Utilities Law.

That to hold otherwise would mean a hardship upon the corporation, and ultimately upon the public who must pay the bills, because it would force the corporation, in order to save its rights, to borrow and pay interest as it went while funds temporarily available were lying idle in its treasury.

APPEARANCES:

E. C. Ryder, Esq., of Bangor, for petitioner.

OPINION AND ORDER.

Petition of the Bangor Power Company, a corporation organized under the general law, engaged in generating and selling electric power, for permission to issue and sell eighteen bonds of Series B, numbered from B-503 to B-520, inclusive, 5 per cent. gold bonds of the par value of \$1,000 each, dated as of September 1, 1911, for the purpose of reimbursing the company for 85 per cent. actual cost of extensions, betterments and permanent improvements to the mortgaged estates and properties purchased, constructed and paid for between January 1, 1914, and June 30, 1914.

Hearing was held May 11, 1915. Public notice was ordered on the petition and proved as ordered.

The petitioner presented evidence bearing on the cost of its properties, consisting of the terms of the purchase of the plant of the Bodwell Water Power Company and the cost of additions, acquisitions and betterments. It also presented evidence concerning its earnings and its contracts for future service, and filed a copy of its mortgage to the Union Trust Company of New York, Trustee, dated September 1, 1911, under which the above described bonds are authorized, with copy of the resolutions of its directors calling for the certification and delivery of these bonds by the trustee. The balance sheet filed by the petitioner shows bills payable amounting to \$14,750. Its accounts payable consist only of current charges, which are paid from earnings in the regular course of business.

The mortgage provides for the issue of bonds to the amount of \$2,500,000, of which \$1,252,000 are now issued and outstanding. \$18,000, being those bonds involved in the present petition, have been authorized under the terms of the mortgage, and are now in the treasury of the petitioner awaiting authority for their issue. The petitioner's purpose, as stated in the petition, is to reimburse itself for expenditures made between January 1, 1914, and June 30, 1914.

This case involves a consideration of the purposes for which such corporations may be permitted to issue bonds.

Those purposes, as stated in Section 35 of the Public Utilities Act, are:

- (1) For the acquisition of property to be used for the purpose of carrying out its corporate powers, the construction, completion, extension or improvement of its facilities, or
- (2) For the improvement or maintenance of its service, or
- (3) For the discharge or lawful refunding of its obligations, or
- (4) For such other purposes as may be authorized by law.

Chapter 55 of the Revised Statutes, under which gas and electric companies are organized and regulated, except as amended by this Act, expressly defined the purposes for which they might issue bonds (Section 9) "to provide means for constructing its lines and plant, funding its floating debt, or for the payment of money borrowed for any lawful purpose." This was the limit of their power to issue bonds when the Utilities Act was adopted, and we think that it controls the application of the words "for such other purposes as may be authorized by law" in Section 35 of that Act. It adds nothing to the first three purposes as we have mentioned them.

The New York Public Service Commission, Second District, held, in the matter of *Lehigh and Hudson Railroad Company*, under statutory language precisely like that defining the first three purposes in our Act, that a corporation cannot be authorized to issue bonds in order to reimburse itself for money which it has previously taken from its treasury and expended for some lawful purpose. While we think that we should assent to this view as a general statement of the law, we should hesitate to apply such a rule literally and without qualification to all conditions.

If a utility expends moneys from its surplus for the acquisition of new properties, or for extensions and betterments, which it apparently does not then need as working capital, with no present intention of replacing it, except from earnings, and later, under changed conditions or business depression, seeks to restore it in this manner, we doubt very much if authority legally could be granted. When, however, during the course of such acquisition or construc-

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tion, it uses available funds not immediately required for current normal expenses and charges, in the expectation of reimbursing its treasury when the work is completed or when such funds are required for such current purposes, it amounts in effect to a temporary deflection or borrowing of money intended for those purposes, and to a certain extent impressed with a trust or obligation that they will be so available. It does not seem that such a course is inconsistent with a fair construction of the statute. To hold otherwise would certainly impose a hardship upon the corporation, and ultimately upon the public who must pay the bills, because it would force the corporation, in order to save its rights, to borrow and pay interest as it went while funds temporarily available were lying idle in its treasury. This apparently was the view taken of the business wisdom of the practice in New York State, when, after the above ruling, the law was amended to provide for just such contingencies.

It may not be easy always to determine under this construction of the law just what interpretation is to be placed upon the facts in a given case, but it is not difficult in the present case. The petitioner had executed its mortgage in 1911, under which it was entitled to receive from the trustee at any time bonds to the amount of \$1,060,000. The balance of the authorized amount, \$1,440,000, was to be certified and delivered "from time to time to reimburse the mortgagor company for the actual cash cost of extensions," etc., "to an amount in face value of such bonds not to exceed 85 per cent. of such actual cost." It has been the policy of the corporation to proceed with such work and from time to time to take down such amount of bonds as it might under that provision. It had so taken down \$192,000 before the present Act became operative. It did the work for which the present issue is sought during the first six months of 1914. Action was taken by its directors to procure certification of these bonds by the trustee on November 10, 1914. We think that the case clearly shows that the petitioner proceeded in good faith in the expectation

that the proceeds from the sale of these bonds were to be made available to restore to the treasury moneys needed for current normal expenses temporarily deflected to save unnecessary interest charges which would have been incurred by making temporary loans as the work progressed.

Now, therefore, after public notice and hearing and the presentation of testimony and mature consideration, we find that the sum of the capital to be secured by the issue of said bonds is required in good faith for purposes enumerated in Section 35, Chapter 129, Public Laws of 1913, and

It is ordered and decreed, That the Bangor Power Company be, and it hereby is, authorized to issue and sell eighteen bonds of Series B, numbered from B-503 to B-520, inclusive, 5 per cent. gold bonds of the par value of \$1,000 each, dated as of September 1, 1911, for the purpose of reimbursing its treasury for 85 per cent. actual cost of extensions, betterments, and improvements to the mortgaged estates and properties purchased, constructed and paid for between January 1, 1914, and June 30, 1914; *provided*, however, that the same shall not be sold for less than 89.81 per cent of their face value and accumulated interest.

That said company report to this Commission in detail, supported by the affidavit of one of its principal officers, its doings hereunder within twenty days after the first day of July, 1915, and monthly thereafter until all of said bonds have been sold.

Given under the hand and seal of the Public Utilities Commission, at Augusta, this fourteenth day of May, A. D. 1915.

MASSACHUSETTS.

Board of Gas and Electric Light Commissioners.

PETITION OF THE EDISON ELECTRIC ILLUMINATING COMPANY OF BOSTON.

Decided April 1, 1915.

**Issue of Stock Approved — Issue of Stock for Purchase of Automobiles
and for "Welfare" Buildings Held to Be of Doubtful Propriety.**

OPINION AND ORDER.

This is an application by the Edison Electric Illuminating Company of Boston for the approval of an issue of additional capital stock of the par value of \$2,048,000, for the purpose of realizing funds to be applied to the payment of liabilities heretofore or hereafter incurred.

Between September 30, 1913, and January 31, 1915, the company has added to its plant and property accounts the sum of \$6,336,099, and \$605,910 of this amount have been charged through "replacement" to earnings. In its last approval of stock in 1913 the Board directed the application of stock, which yielded \$2,024,770, to the cost of additions to plant made subsequent to September 30, 1913.

Included, however, in the expenditures covered by the amount stated are certain items in the nature of alterations or reconstruction of existing property adding little or nothing to its value, or relating to work upon customers' premises rendered necessary by changes in the conditions of service. Other items are for automobiles, horses and wagons, signs, furniture, etc., for which the Board has not heretofore approved stock. While realizing the burden upon a company's working capital of the initial cost of such equipment as automobiles, especially when necessarily incurred within a brief period, and therefore the force of the argument of raising some part, if not at all, of such

cost by the issue of capital, yet its renewal must be so promptly provided for and is so regularly recurrent that the Board believes such renewals may properly find their way directly into operating accounts. Certain other expenditures, considerable in amount, relate to the so-called "welfare" buildings. The Board sympathizes with every humane effort of a company in behalf of its employees, and recognizes that its extent must depend upon circumstances not readily defined. But when directed beyond suitable provision for the health and safety of the employees, and if so substantial in amount as to tend to add an extra burden to the consumer or to take from the stockholder the full measure of his right to a fair return, the representation of such expenditures in permanent capital becomes of doubtful propriety.

Without undertaking an explicit determination with respect to each of the items in question, and taking into account the company's resources and condition, the Board is of the opinion that the sum of \$3,500,000 represented in the promissory notes of \$5,640,000 outstanding on January 31, 1915, may be capitalized. The amount estimated as necessary to complete work unfinished or authorized on that date is \$1,472,137.

The following is therefore adopted:

On the petition of the Edison Electric Illuminating Company of Boston, pursuant to the provisions of Section 39 of Chapter 742 of the Acts of the year 1914, for the approval of an issue of additional capital stock of the par value of \$2,048,000 for the objects named in said petition, after public notice and hearing, it being deemed by the Board that said amount of stock is reasonably necessary for the purpose for which such issue is authorized,

It is ordered, That the Board hereby approves of the issue by the Edison Electric Illuminating Company of Boston, in conformity with all the requirements of law relating thereto, at the price of \$215 a share, as determined by its directors, of 20,480 shares of new capital stock of the par value of \$100 each, the proceeds thereof to be applied to the

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following purposes, and to no other, to wit: the proceeds of 16,279 shares to the payment and cancellation of an equal amount of the obligations of the company represented by its promissory notes outstanding on January 31, 1915, and the proceeds of 4,201 shares to the payment of the cost of additions to plant made subsequent to said thirty-first day of January.

And if any shares shall remain unsubscribed for by the stockholders entitled to take them under the provisions of law relating thereto,

It is further ordered and determined by the Board, That all such shares shall be offered for sale at some suitable place in the city of Boston, and that notice of the time and place of such sale shall be published in the "Boston Daily Advertiser," the "Boston Evening Transcript," and the "Boston Daily Globe," newspapers published in the city of Boston.

MARLBOROUGH ELECTRIC PETITIONS.

Decided May 12, 1915.

Reduction of Rates for Electricity Recommended — Valuation Not a Decisive Test in Rate Fixing — Paid Up Capital Honestly and Prudently Invested to be Recognized in Determining Rates — Function of Reserve for Depreciation Considered.

Complaints were filed by three municipalities alleging that the price of electricity sold and delivered by the Marlborough Electric Company was unreasonable.

The company was supplying electricity in the city of Marlborough and the towns of Berlin, Bolton, Northborough and Southborough, and to the municipal lighting plant of Shrewsbury. Subsequently it leased the electric property of the Westborough Gas and Electric Company, and thereafter supplied electricity to that town. The generating plant of the Westborough company was shut down and current was supplied from Marlborough. In 1910 the Marlborough company began to purchase electricity from the Connecticut River Transmission Company and since that date its own generating station has been operated only when required to supplement or to tide over periods of interference in the Transmission company's service.

The city of Marlborough employed an engineer to examine the company's property and make a valuation thereof. In this valuation the engineer included only that part of the property useful and efficient for the prosecution of the company's business under existing conditions. He endeavored to find the original value of such property by determining the cost of other similar property at or about the date of installation of this property. He then considered the present condition of the property and its usefulness to the company.

The city conceded that the cost of the property which is useful and efficient for the prosecution of the company's business under existing conditions was a controlling factor in determining the rate, but claimed that no allowance should be made for property which had been superseded by a permanent arrangement for the purchase of electricity from outside sources, on the ground that had there been a wise administration of the company's affairs these losses would have been anticipated and provided for.

Held: That in the absence of evidence of mismanagement or dishonesty, under the long established policy of the Commonwealth all paid up capital honestly and prudently invested under normal conditions should be recognized in determining what is a fair rate; but it does not follow that idle capital should be on the same footing as active;

That the Board distrusts a valuation as a decisive test of investment where the actual cost of the property and the circumstances under which it was acquired can be ascertained;

That one of the important functions of depreciation besides taking care of the daily wear and tear, is the anticipation of changes in the art and in the possible intervening conditions which, although they may have little or no relation to the useful life of the physical property, yet cannot be ordinarily foreseen.

Recommended: That the maximum net price for electricity supplied by the Marlborough Electric Company shall not exceed 12 cents a kilowatt hour.

OPINION.

These are three complaints in writing under Section 34 of Chapter 121 of the Revised Laws (now Section 162 of Chapter 742 of the Acts of the year 1914) by the mayor and more than twenty customers in Marlborough, by the selectmen and more than twenty customers in Northborough, and by the selectmen of Southborough, of the price and quality of electricity sold and delivered by the Marlborough Electric Company.

After due notice public hearings as required by law were held upon said complaints in Marlborough, at which the

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city and the towns named, as well as the town of Westborough, were represented by the mayor, selectmen and solicitors, respectively, and the company by its counsel.

During the hearings a supplementary petition addressed to the company was filed by a committee of the town of Berlin asking "for a reduction in the price of electricity furnished by your company to the town of Berlin and to users of electricity for lighting and domestic uses in said Berlin." The complaints, however, do not relate to street lighting, and in their consideration the Board has confined its attention to the prices to private customers.

The company is supplying electricity in the city of Marlborough and in the towns of Berlin, Bolton, Northborough and Southborough, and to the municipal lighting plant of Shrewsbury. On November 14, 1910, it leased the electric property of the Westborough Gas and Electric Company for a term of ninety-nine years, and since that date has thereby been supplying electricity in the town of Westborough. In this same year the Westborough generating plant was shut down, and since then the current has been supplied from Marlborough. The Marlborough company began in 1910 purchasing electricity from the Connecticut River Transmission Company, and since then its own generating station has been operated only when and as required to supplement, or to tide over periods of interference in, the Transmission company's service.

A number of specific complaints respecting the company's service were submitted during the course of the hearings. These appeared to be due either to interruptions in the service, or to the overloading of certain of the circuits. The latter difficulty is local and should be promptly remedied whenever it occurs. The Board understands that the particular instances brought to its attention have been remedied meantime, but in case they have not been corrected, or similar instances should occur hereafter, its authority may be invoked at any time by those immediately concerned. The interruptions in the service are more fundamental and have doubtless been annoying. They are not

directly within the company's control, but should be eliminated so far as is practicable, for the quality of the service rendered by the company is of the utmost importance to its customers. There is reason to believe that the possibility of their occurrence is diminishing, as the operating conditions governing the supply now used by this company are better understood and improved.

Some general criticisms were directed at the company for extending its lines unduly into territory where the business is of a character to show little or no profit. So far as the Board is aware, however, such extensions have been made only in response to actual needs or in reasonable anticipation of such needs. It is also not a matter in which much reliance should be placed in general statements; and certainly the Board is reluctant to say anything to discourage furnishing electricity to all in the territory supplied who can properly be reached by the company's lines. During the last six years the company's output has shown an increase of something like 300 per cent., and there is reason to believe that it has by no means reached its probable extent even with the company's present investment. If this prediction is correct, the price recommended can be bettered.

The existing relation between the Marlborough and Westborough companies was discussed to some extent during the hearings. The latter company has no gas property, as its name implies, but only an electric property. Since the lease was made the Marlborough company has operated the Westborough property as an integral part of its own system, and has charged the same rates to private customers in Westborough as in Marlborough. Only the agreed rental and other charges fixed in the lease, and the money required for additions to and depreciation of the Westborough property, are now separately accounted for. Under these circumstances, and for the purposes of this decision, the Board has dealt with the two properties as though in fact under one ownership. But nothing should be implied in this treatment of the situation as an approval of, or acquiescence in, the propriety or validity of that lease.

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For a number of years the company has employed the so-called "demand" system in its charges for electricity, both for light and power. In the consideration of this case, however, it seems only necessary to consider the prices for commercial lighting. For a certain number of hours' use a month of the lighting customer's demand, varying with the month, but aggregating five hundred and twenty hours a year,—known in the schedule as "primary usage,"—the rate is 15 cents a kilowatt hour. For all electricity consumed a month in excess of this amount the rate is 12 cents a kilowatt hour. Where the customer guarantees a use of not less than four hundred hours of his demand a year, the rate for "primary usage" is 20, and for "secondary usage," 6 cents a kilowatt hour. The "primary usage" under this yearly guarantee consists of a certain specified use of the customer's demand a month, which varies with the month, but aggregates four hundred hours a year. The demand is defined as "the greatest amount of electricity used by the customer at any one time," and, until automatically determined by the reading of a demand indicator, it is estimated by the company, in no case, however, at less than 108 watts. After an indicator is installed the demand is established by its highest reading during the months of November, December and January for each year beginning February 1. As a matter of fact, the company has few, if any, of such demand indicators installed on the premises of its customers, and the demand is estimated at one-third of the customer's connected load, assuming each lamp socket to be the equivalent of 50 watts. In the application of the rate for guaranteed use of the demand, the latter is ordinarily determined in each case by observation of the number of lamps normally lighted at any one time.

The Board's finding relates to the maximum net price at which electricity may reasonably be required to be sold for any use. It may be proper to say, however, that the method which this company employs for applying the "demand system" is so crude and liable to abuse as to lack such merit as is ordinarily urged in favor of this system. It is

believed that if the company is to continue to offer differentials, whether for light or power, the whole schedule may well be overhauled.

The city of Marlborough employed an experienced engineer who examined the company's property, made a valuation and reached certain conclusions (based upon his examination and valuation and his judgment as to a depreciation allowance and a fair return) of the prices at which the company might reasonably be expected to sell electricity. In his valuation he included only that part of the property which is useful and efficient for the prosecution of the company's business under existing conditions. In determining the value of such property he endeavored to find and state its probable original cost, founded not, however, on its actual cost to the company as disclosed by the books, but upon the cost of other similar property at or about the date of its installation, and then, in view of its condition and present utility to the company, reached his conclusions. Approaching the problem from this standpoint the company's generating station in Marlborough was considered primarily as a transformer station and secondarily as a steam reserve or relay, and only such part of the generating equipment as he deemed might be so usefully employed entered into the valuation, save so far as the excluded equipment had a scrap value.. All of the Westborough station not used for transforming and distributing the electricity furnished from Marlborough was excluded from consideration in his valuation.

At the time when his valuation was prepared the last return of the company then available was that of June 30, 1913. Substantial additions to the distribution systems of both companies have been made meantime, but there is no essential change in the considerations affecting this decision. As a result of the application of his method he estimated the original cost of the company's property, as it then stood, to be \$345,592, and its present value at \$235,619. These figures exclude the Westborough property, whose present value he estimated at \$30,416. Adopting the

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company's operating costs, and computing a 7 per cent. return on the original cost and $3\frac{1}{2}$ per cent. allowance for depreciation on the present value, he concluded that there was a substantial excess earning which might fairly be distributed to the consumers of electricity in lower rates. He expressed the belief that the average received for commercial lighting was too high; that the maximum price might be dropped to 10 cents and the secondary and other charges, omitted; and that there would still be a substantial balance available for a reduction in the price of street lighting.

The Marlborough company was organized in 1886, with a capital stock of \$30,000, which was not increased until after the present owners assumed control in 1907. Meantime it paid no dividends, with the exception of one 3 and another of $2\frac{1}{2}$ per cent., and the increase in its plant and other assets were provided out of earnings and by borrowed money. Its business was confined to Marlborough and Southborough. It had passed through the vicissitudes common to electric properties. A new station was built and equipped in 1893-94, and a substantial increase in the apparatus made a few years later, and much of the original property had been displaced. The new owners greatly extended the company's lines, not only in Marlborough but in the adjoining towns, and to meet the demands of the additional business had increased the capacity of the station before the advent of the Connecticut River Transmission Company made a supply from this source more advantageous. Since the Marlborough company first made returns to the Board in 1889 it appears to have expended upon its plant (including, of course, plant which has meantime disappeared) over \$450,000, of which fully 70 per cent. has been expended since 1907. For the extensions undertaken by the new owners, and for the accumulated floating debt for like purposes of the earlier years, the company has issued additional stock of the par value of \$280,000, which has yielded to the company approximately \$350,000. During the past five years it has paid dividends of 10 per cent. It is of interest, although perhaps of no essential import-

ance to this decision, to note that in contrast with the engineer's figures the assessors valued the plant for purposes of taxation in 1914 at \$490,820. The financial history of the Westborough company has been somewhat similar, although its operations have been far more restricted.

In view of the city's contention these facts raise interesting and important questions respecting the basis and amount of the return to be allowed and the consideration of depreciation. In the trial of the case these questions overshadowed some other minor matters which were suggested, but necessarily have little weight in its decision and need not be discussed here.

The theory advanced by the city practically conceded that the cost of the property which is useful and efficient for the prosecution of the company's business under existing conditions is a controlling factor in determining the rate. But it also claimed that no allowance should be made for property which has been superseded by a permanent arrangement for the purchase of electricity from outside sources, on the ground that had there been a wise administration of the company's affairs these losses would have been anticipated and provided for. In the absence of evidence of mismanagement or dishonesty the Board believes that under the long-established policy of the Commonwealth all the paid-up capital honestly and prudently invested should under normal conditions be recognized in determining what is a fair rate, but it does not follow, however, that idle capital is to be on the same footing as the active. The Board distrusts a valuation as a decisive test of investment where actual cost of the property and the circumstances under which it was acquired can be ascertained. It is also of the opinion that one of the important functions of depreciation, besides taking care of the daily wear and tear, is the anticipation of changes in the art and in the possible intervening conditions which, although they may have little or no relation to the useful life of the physical property, yet cannot ordinarily be foreseen. It realizes, however, that a prudent management cannot always have provided

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fully for changes of this character, and especially in the first stages of the industry, or in a case like this where the business of the earlier years was not profitable. It believes that a proposition to allow the right of the investment to a return, but to disallow in any substantial measure the obligation to keep it good, is not consistent or sound.

Applied to this case the views which the Board has expressed do not result in a conclusion as to the allowable return so different in amount from the claim made by the city as appreciably to affect a finding as to price. But the Board does believe that, under all the circumstances, sufficient emphasis was not given to the need of a more adequate provision for depreciation. In the recommendation as to price hereinafter made the Board has been influenced by this consideration. And necessarily, so far as affecting any future questions as to price, the policy which the company shall hereafter pursue with respect to this matter will be pretty conclusive evidence of the prudence of its management.

The Board, therefore, recommends that on and after the first day of June, 1915, the maximum net price for electricity supplied by the Marlborough Electric Company for any use shall not exceed 12 cents a kilowatt hour.

NEBRASKA.

State Railway Commission.

IN THE MATTER OF THE APPLICATION OF THE OMAHA AND LINCOLN RAILWAY AND LIGHT COMPANY FOR AUTHORITY TO ISSUE SECURITIES.

Application No. 2265.

Decided March 20, 1915.

Issue of Securities Authorized — Valuation of Extensions and Improvements Made — 5 Per Cent. in Addition to Stores and Supplies Allowed for Working Capital — 15 Per Cent. Allowed for Cost of Financing Business — 7 Per Cent. on Outstanding Liabilities Ordered Set Aside for Maintenance and Reserve for Depreciation.

OPINION.

This is an application made to the Commission pursuant to Section 10705, Cobbey's Annotated Statutes for 1911, "*An Act Regulating the Issuance of Stocks, Bonds, and Other Forms of Indebtedness of Common Carriers and Public Service Corporations and Providing Penalties for the Violation Thereof.*" In force July 1, 1909.

The applicant herein is a railway corporation organized under and by virtue of the laws of the State of Nebraska, with authority to construct and equip a line of railroad from the city of Omaha, in Douglas County, Nebraska, to the city of Lincoln, in Lancaster County, Nebraska, with branches intersecting its main line extending to the village of Ralston, in Douglas County, and the city of South Omaha, in Douglas County, Nebraska, and to operate and construct an electric system, to furnish light and power in the towns along said proposed road and elsewhere in Nebraska.

On or about the fifteenth day of August, 1913, the applicant herein purchased from William B. McKinley, trustee,

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a line of railroad extending from South Omaha, in Douglas County, Nebraska, to the village of Papillion, in Sarpy County, Nebraska, which said line of railroad had previously been constructed along the proposed line of this applicant's proposed road, and upon the nineteenth day of August, 1913, after a hearing in Application No. 1833, said application having been made to the Commission by the applicant herein for the authority of the Commission to issue \$200,000 in stocks and bonds, for the purchase of said properties, the Commission confirmed the purchase of said properties, and granted its authority to the applicant to issue \$125,000 in first-mortgage bonds and \$75,000 in common stock.

The Omaha and Lincoln Railway and Light Company now applies to the Commission for its authority to issue additional securities in the amount of \$175,000, the proceeds of which are to pay for extended improvements of said railway and the construction of high power transmission lines and buildings necessary in the operation of said business.

* * * * *

On February 6, 1915, a hearing was held at the office of the Commission, at which hearing reports were filed by the engineering and accounting departments of the Commission, based upon extended investigations of the two departments. Chief Engineer Forbes of the Commission filed his report of the complete inventory and valuations of all extensions and improvements of said railway lines and the construction of the transmission lines, said report being "Exhibit 3" in the transcript of the proceedings at said hearing, and includes all of said properties up to and including July 1, 1914. Said valuations as shown by said report amount to \$99,450.66. "Exhibit 4" contains a statement filed by the applicant, showing the amount of additional moneys spent since July 1, 1914, which amounts to \$12,003.67, but, after a check by Mr. Forbes, it was found that the item for \$3,768.29 was an expenditure for meters which could not be properly chargeable to capital account. De-

ducting this amount, we have a balance of \$8,235.38. This makes a total of \$107,686.04. "Exhibit 3" contains an item of \$3,286.44 for stores and supplies, which, in the opinion of the Commission, are properly chargeable to working capital, and the Commission is of opinion that if 5 per cent. over and above this item is allowed upon \$107,686.04, which will amount to \$5,384.30, making a total working capital of \$8,670.74, the amount for working capital will be sufficient. This will make a total amount of \$113,070.34.

The accounting department in its report shows that a much greater amount of money has been spent by the applicant, but the accounts of the applicant are so intermingled with properties that have been constructed in Iowa and accounts that are not properly chargeable to working capital, that it is impossible almost to segregate the items, and determine just how much should be charged to capital by said accounts.

The item of \$113,070.34, however, includes nothing for the cost of financing the property, and the Commission is of the opinion that allowance should be made to amply take care of said costs and to allow for certain items of expenditure which may be properly chargeable to capital as shown by the accounts, and that 15 per cent. upon the total amount would be liberal. This would amount to \$16,960.55, for which the company is asking \$26,182.89, which the Commission believes is excessive, and should not be allowed. This brings the grand total to \$130,030.89.

The Commission is of the opinion that an issue of \$130,000 in securities will be ample as outstanding liabilities to represent all of the additions, betterments, and extensions both to the railway and to the light and power transmission lines, and that said securities should be divided as follows: \$97,500 5 per cent. bonds; \$22,000 6 per cent. preferred stock, and \$10,500 common stock. This, added to the liabilities formerly issued by the authority of the Commission, will make a total of \$330,000.

In order that the gross assets of the company be kept to a value approximately equal to the outstanding liabilities, the Commission is of the opinion that the company should set aside from its operating income annually an amount of money as maintenance and depreciation reserve funds, and that, after a somewhat extended study by the engineering department, said amount should be somewhere between 7 and 8 per cent., but that for the present the company should set aside 7 per cent. annually upon the entire amount of outstanding liabilities for said purposes. Should this amount prove to be incorrect, it may be varied from time to time by the Commission upon proper showing made by the applicant herein.

The Commission is further of the opinion that the company should make annual reports on the thirtieth day of June each year to the Commission as to the expenditures of said maintenance and depreciation reserve funds, and show conclusively the amount of money that is being spent in the railway division of the properties and the amount of money that is being spent on the transmission lines, that the Commission may know that said properties are being maintained to a proper standard of efficiency.

ORDER.

It is, therefore, ordered, By the Nebraska State Railway Commission, and the authority is hereby granted to the applicant to issue \$97,500 in 5 per cent. bonds, \$22,000 6 per cent. preferred stock, and \$10,500 common stock; and that said applicant shall report to the Commission upon the issuance of the same, and shall file with the Commission copies of each denomination of the securities issued, showing the amount issued in each denomination and to whom issued.

It is further ordered, That said applicant shall set aside as maintenance and depreciation reserve funds 7 per cent. upon its entire outstanding liabilities, which amount to \$330,000.

It is further ordered, That the applicant herein shall keep separate, true, and accurate accounts of its entire operating income, showing the operating income from the transmission lines and the operating income from its railway properties. Said accounts shall show in complete detail the amount of money spent in operation of the transmission lines and the amount of money spent in the operation of its railway properties; the amount of money spent in maintenance and depreciation of the transmission lines and the amount of money in maintenance and depreciation of its railway properties; the amount of money spent in extensions and betterments of the transmission lines and the amount of money spent in extensions and betterments of the railway properties—to the end that the Commission may know whether said plant is being properly maintained, so that the assets will be kept up to an approximate value as represented by the outstanding liabilities authorized to be issued. Said accounts, vouchers, and all records shall be open to audit, and may be audited from time to time by accountants and examiners designated for such purpose by the Commission.

It is further ordered, That this order shall take effect upon the date of the acceptance of all of the provisions herein by said applicant, and continue in force until otherwise ordered by the Commission, and that within ten days after service upon the applicant of a copy of said order, the said company shall notify the Commission whether the terms of this order are accepted and will be obeyed.

Dated March 20, 1915.

NEW HAMPSHIRE.

Public Service Commission.

CONNECTICUT RIVER POWER COMPANY OF NEW HAMPSHIRE. PETITION FOR AUTHORITY TO ISSUE NOTES.

No. D-254.

Decided April 21, 1915.

Issue of Refunding Notes Authorized — Policy of Commission Not to Investigate Original Expenditures Represented by Bonds or Notes to be Refunded.

APPEARANCES:

For the petitioner, *Allen Hollis.*

REPORT.

BENTON, Commissioner:

This is a petition by the Connecticut River Power Company of New Hampshire asking for authority to issue its five-year 6 per cent. notes to the amount of \$500,000 face value, the same to be dated April 1, 1915, and to be payable five years after date. A hearing was held at the office of the Commission on March 19, 1915. The purposes for which the proceeds of the proposed notes are to be used are stated as follows:

“First — For refunding or retiring about \$314,000 face value of outstanding notes of said company, dated April 1, 1910, and maturing April 1, 1915, which were issued by said company for the purpose of constructing and completing its water power and electric generating station situated at its dam on the Connecticut River, running from Hinsdale, New Hampshire, to Vernon, Vermont, of which sum about \$204,158 represents construction in the State of New Hampshire.

“Second — For the purpose of paying the cost of construction or indebtedness incurred in connection with the transmission line from Brattleboro, Vermont, to Rockingham, Vermont, part of which line is in the State of New Hampshire and the total cost of which line was about

\$82,794.62, and the cost of the part in New Hampshire was approximately \$8,606.33.

"Third — For paying the cost of construction or indebtedness incurred for the cost of construction of the transmission line from said generating station across a part of Vermont to the Massachusetts state line, the total cost of which was about \$67,650, and the cost of the part lying in the State of New Hampshire, amounting to approximately \$11,507.10."

Upon applications for authority to refund bonds or notes issued prior to the passage of the Public Service Commission Act we have not heretofore considered it practicable or desirable to investigate the original expenditure represented by the bonds or notes to be refunded. If the same by general testimony are shown to have been issued on account of the acquisition or improvement of properties in New Hampshire their refunding will ordinarily be authorized without inquiring as to the details of such expenditure. (*Twin States Gas and Electric Company*, 4 N. H. P. S. C. Rep. 9.)

The refunding proposed in this case in accordance with this general practice will be permitted without investigation of the details of the original expenditure.

The estimate offered by the petitioner of the proportion of the original investment which was made in New Hampshire is accepted and notes necessary for the purpose of refunding or retiring notes to the amount of said \$204,158 will be authorized. So far as the proposed refunding relates to indebtedness not arising out of the purchase or improvement of properties in New Hampshire, our approval is not required.

The same is true of the funding of the floating debt of the petitioner incurred for recent new construction as set forth in the second and third paragraphs of the petition. The entire proposed issue of notes has been authorized by the Public Service Commission of Vermont, as is required by the law of that State. Our authority is required only as relates to items of expenditure in New Hampshire. These we have investigated and upon all the evidence we find that the floating debt which the petitioner desires to fund repre-

sents investment in New Hampshire in property properly capitalizable to an amount probably not less than \$20,042. Notes necessary to yield this amount at the price at which the same are to be issued will also be authorized.

The sum of the foregoing amounts to be funded or re-funded is \$224,200. The notes are to be issued at 95 per cent. of face value. The amount reasonably requisite for the purposes proposed is accordingly \$236,000. An order authorizing said issue to that amount will be entered.*

Filed April 21, 1915.

GRAFTON COUNTY ELECTRIC LIGHT AND POWER COMPANY v.
STATE OF NEW HAMPSHIRE.

Commission's Order Set Aside — Case Remanded to Commission.

On May 4, 1915, the Supreme Court of New Hampshire vacated the order of the Commission (See Commission Leaflet No. 41, p. 1304), denying the petitions of the Lebanon Electric Light and Power Company and the Mascoma Electric Light and Gas Company for authority to transfer their properties to the Grafton County Electric Light and Power Company, and the petition of the latter to issue its securities and engage in business in Lebanon and Hanover, and remanded the case to the Commission for such further proceedings, not inconsistent with the opinions and findings of the Court, as in the opinion of the Commission justice might require.

* Order omitted.

WISCONSIN.

Railroad Commission.

F. H. CHARLESWORTH *et al.* v. OMRO ELECTRIC LIGHT
COMPANY.

U-399.

Decided March 2, 1915.

Valuation of Property Made — Cost of Reproduction and Cost of Reproduction Less Depreciation Considered — Property Paid for out of Earnings Included in Valuation — 12 Per Cent. Allowance for Overhead Charges Made.

Complaint was made against the rates and service of the respondent, and the Commission was asked (1) to place a valuation on the property of the respondent used in its business at Omro, and to fix a reasonable rate for light furnished the village, the school district and all users of electric light in the village, (2) to require the respondent to furnish continuous service every day instead of service from dusk to midnight as at present rendered, (3) to require the respondent to refund to each of its patrons, including the village and school district, in their proportionate shares, any and all moneys collected from them in excess of a reasonable charge for service heretofore rendered, and (4) to grant such further relief as might seem necessary and just.

The respondent desired the Commission to authorize it to set aside its flat rates and to place all its consumers on meter rates.

A physical valuation of the plant was made and the respondent's balance sheets, revenues and expenses were investigated and the latter apportioned between commercial and street lighting service. The value of the physical property, exclusive of materials and supplies, but including an allowance of 12 per cent. for overhead charges, was fixed at \$12,758, cost of reproduction, and \$8,794, cost of reproduction less depreciation. Considerable construction paid for out of earnings had not been charged to the plant account.

Held: That property paid for out of earnings is as much the property of the respondent as though paid for by new capital;

That the value of the respondent's plant and business should be placed at \$11,500.

Division of Expenses Immaterial to Public, Provided Cost of Service is Reasonable.

The petitioner contended that the amount paid by the respondent in wages and salary was more than the business required.

Held: That the manner in which expenses are divided between management and other accounts is not very material to the public, but the total cost of service should be maintained within reasonable limits; if unusually high salaries are not exceptionally productive they must be considered partially as a disposition of the net income.

Substitution of Meter Rates for Flat Rates Authorized.

Held: That as flat rates lead to waste of service and inequality of charges, they should be abandoned and meter rates substituted therefor.

Refund of Charges Refused.

Held: That as the charges collected by the respondent were in accord with its schedule on file with the Commission, even if those rates were excessive, the Commission is without power to grant any refund on account of past services.

Increase in Hours of Service Ordered.

If the present dusk-to-midnight operation were to be continued, some reduction in rates would be warranted; if dusk-to-dawn service were to be rendered, the present rates would allow a fair return after providing for operating expenses; if continuous service were to be rendered a material increase in rates would be required. The preference of the consumers, together with the fact that convenience only, rather than necessity, was shown to require day service, caused the Commission to order dusk-to-dawn service at rates approximately those in force, rather than to reduce the rates for the present service or to increase rates for continuous service.

Minimum Charge Substituted for Meter Rental.

Held: That a monthly minimum charge should be substituted for the present meter rental.

Discount for Prompt Payment Approved.

The Commission approved a schedule providing gross and net rates, and ordered that the difference between the gross and the net rates should constitute a discount for prompt payment.

Allowance for Rate of Return and Reserve for Depreciation Made in Computing Probable Future Operating Expenses.

In computing the probable operating expenses of this plant with its present value of \$11,500, the Commission allowed \$420 per year as reserve for depreciation and \$805 per year as return on investment.

Book Value Held Not Binding on Company — Expenditures from Earnings for Capital Accounts Not Properly Included in Operating Expenses.

Held: That in the determination of a fair value of a plant, the book value should not be considered binding on the company where other evidence points conclusively to a higher value, but in all such cases the expenditures out of earnings for capital investment should be excluded from the operating expenses.

OPINION AND DECISION.

This matter is a petition of F. H. Charlesworth *et al.* asking for an order of the Commission covering the following particulars relative to rates and service of the Omro Electric Light Company, respondent, in the village of Omro:

(1) That a valuation be placed on the property of the respondent used in its business at Omro and that a reasonable rate for the light furnished for the village of Omro, the school district and all users of electric lights in the village of Omro be determined upon and fixed;

(2) That the respondent be required to furnish a continuous service each day for its patrons, and during the whole twenty-four hours of each day;

(3) That the respondent be required to refund to each of its patrons, including the village of Omro and the school district in their proportionate shares, any and all moneys collected for service from them in excess of a reasonable rate and in excess of a reasonable charge for service heretofore furnished;

(4) That the respondent be required to furnish adequate service at a reasonable rate in the future;

(5) That such other, further and different order and relief be made as may seem necessary and just to the Commission.

The petition was filed with the Commission September 30, 1913, and, pursuant to notice, hearing was had in the village hall, Omro, Wisconsin, February 20 and May 19, 1914, at which time and place the following appearances were entered: *W. E. Hurlbut*, in behalf of the petitioner; *F. B. Keffe*, in behalf of the respondent.

The petitioners endeavored to show by testimony that there is a considerable desire and need among the residents of the village of Omro for continuous or, at any rate, all-night service, and that the respondent's business would be much increased if the daily operating period were lengthened. That a considerable desire for the extension of the operating period exists appears to be established by the evidence. It is natural that this should be so as a greater convenience is usually desired when it may be had at no greater price. While actual need is a different matter, the border line between convenience and necessity is not always easily ascertained. In this particular case it does not appear that the petitioners have fully established that public necessity requires the extension of the daily period of service; but should it be found that the earnings would adequately cover the cost of a longer period of operating the plant, an exact definition of the public requirement—as to whether it is a necessity or a convenience—would not be so vital to the issues of the case.

In reaching its conclusions in this matter, the Commission has valued the respondent's property, analyzed the costs of operation and, insofar as practicable, estimated the effect upon the business of all-night and continuous service. Testimony and evidence concerning these several subjects were introduced at the hearing and have been considered by the Commission.

INVESTMENT

The Commission's appraisal of the respondent's physical property as of January 1, 1914, reveals that the cost new, exclusive of materials and supplies, was \$12,758 and the present or depreciated value, \$8,794.

An appraisal was made by W. A. Baehr for the respondent, and was introduced in evidence. The value of physical property was placed by Mr. Baehr at \$14,946 cost to reproduce new, and at \$12,457 present or depreciated value. The differences between the respondent's and the Commission's appraisals were not discussed at the hearing but upon examination of the inventories they appear to differ chiefly in the value of the land; overhead allowances for engineering, superintendence, interest during construction, and contingencies; and appraised depreciation. No evidence was adduced to show that the respondent's appraisal represents more nearly the true value than that which was determined by members of the Commission's staff. The valuation fixed by Mr. Baehr shows also a sum of \$2,500 for going value but the manner in which this was determined was not revealed.

The book value of property and plant set forth in the respondent's annual statements to the Commission was \$9,924.82 on June 30, 1912, 1913, and 1914. This static condition suggests that perhaps the cost of additions to the plant was not always properly recorded on the books, with the result that the investment is actually in excess of the amount shown by the property and plant account. This appears to be supported by three lines of evidence:

1. The Commission's appraisal, made from an inventory of the property, exceeds the book value considerably.
2. Testimony shows that some additions have been paid for directly from earnings.
3. Some of the expenditures, charged to operating expenses, appear to be construction costs.

The balance sheet for the year ending June 30, 1914, shows a depreciation reserve liability of \$1,673.69 and a deficit of \$298.18. But, since it is quite definitely known that the book value does not fully represent the cost of reproduction nor the original cost of the property and plant, because considerable construction paid for out of earnings has not been charged to the plant account, it appears quite certain that a deficit does not actually exist and that the reserve is fully covered by assets. It is quite

clear also that the property paid for out of earnings is as much the property of the respondent as though paid for by new capital. Such earnings might have been first distributed among the stockholders as dividends and later returned for investment. Under the circumstances, it appears that the value of the respondent's plant and business should be placed at \$11,500.

TABLE I
COMMISSION'S VALUATION OF PHYSICAL PROPERTY
OMRO ELECTRIC LIGHT COMPANY
As of January 1, 1914

	<i>Cost new</i>	<i>Present value</i>
Land.....	\$150	\$150
Transmission and distribution.....	5,397	4,228
Buildings and miscellaneous structures.....	1,170	468
Plant equipment.....	4,304	2,762
General equipment.....	370	244
Total.....	\$11,391	\$7,852
Add 12 per cent (see note below).....	1,367	942
Total.....	\$12,758	\$8,794
Material and supplies.....	720	720
Total.....	\$13,478	\$9,514

NOTE.— Addition of 12 per cent to cover engineering, superintendence, interest during construction, contingencies, etc.

TABLE II
BALANCE SHEET
OMRO ELECTRIC LIGHT COMPANY
As of June 30, 1914

<i>Assets</i>	<i>Liabilities</i>
Property and plant..... \$9,924 82	Capital liabilities
Current assets	Common stock..... \$10,000 00
Bank..... 245 70	Reserve liabilities
Accounts receivable..... 358 63	Depreciation reserve..... 1,673 69
Material and supplies..... 846 36	
Deficit..... 298 18	
Total assets..... \$11,673 69	Total liabilities..... \$11,673 69

INCOME ACCOUNT

The respondent's annual income accounts for the years ending June 30, 1911, 1912, 1913, and 1914 are shown in Table III:

TABLE III
SUMMARY OF INCOME ACCOUNTS
OMRO ELECTRIC LIGHT COMPANY

	Year ending June 30			
	1911	1912	1913	1914
REVENUES:				
Commercial lighting.....	\$2,817 11	\$3,152 54	\$3,559 44	\$3,237 51
Municipal contract lighting.....	1,228 80	1,200 00	1,291 29	1,367 93
Miscellaneous.....		27 00		
Total revenues.....	\$4,045 91	\$4,379 54	\$4,850 73	\$4,605 44
EXPENSES:				
Generation.....	\$2,039 91	\$2,388 60	\$2,246 51	\$2,278 73
Distribution.....	194 50	186 44	371 79	358 06
Consumption.....	157 35	100 13	300 00	300 00
Commercial.....	60 00		599 71	323 50
General.....	300 00	575 70	507 56	1,058 30
Undistributed.....	131 62	109 41	119 40	113 00
Total above.....	\$2,883 38	\$3,360 28	\$4,144 97	\$4,431 59
Depreciation.....	445 75	423 47	376 99	282 74
Taxes.....	141 40	118 78	112 02	147 99
Total operating expenses.....	\$3,470 53	\$3,902 53	\$4,633 98	\$4,862 32
Net operating revenue.....	\$575 38	\$477 01	\$216 75	*\$256 88
Non-operating revenues.....	241 24	441 09	376 82	149 01
Gross income.....	\$816 62	\$918 10	\$593 57	*\$107 87
DEDUCTION FROM GROSS INCOME:				
Interest and miscellaneous.....				
Net income.....	\$816 62	\$918 10	\$593 57	*\$107 87
Disposition of net income:				
Dividends.....	1,100 00	750 00	960 00	270 00
Surplus or deficit for the year...	*\$283 58	\$168 10	*\$366 43	*\$577 87

The annual commercial revenues increased \$740 from 1911 to 1913 but a falling away of these revenues in 1914 made the net increase for the entire period only about

* Deficit.

\$420. The street lighting earnings increased \$140 from 1911 to 1914, so that the increase in total operating revenues amounted to \$560.

The operating expenses increased at a more rapid rate and consequently have resulted in a deficit of \$108 for the year ending June 30, 1914. The increase in operating expenses became most noticeable in 1912 when certain salary increases took place. In the face of the increase in operating expenses the net income has been sufficient to furnish substantial dividends except for the last year when the expenses continued to grow in spite of a decrease in the revenues.

The petitioners took up at the hearing the subject of wages and salaries and endeavored to establish that the amount paid by the respondent is more than the business requires. Concerning this contention, it may be said that the manner in which the expenses are divided between management and other accounts is not so very material to the public, but that the total cost of service must be maintained within reasonable limits. A rule that the actual expenditures should be controlling in fixing rates, regardless of what they may be, could not be made to stand, for reasons too obvious to require mention. Costs, therefore, must be examined and tested. If wages and salaries are unusually high, it is not unreasonable to expect that a consequent greater efficiency will reduce the expenses in other directions. But if unusually high wages and salaries are not exceptionally productive, they must be considered partially as a disposition of the net income. One way of making a test of the expenses, at least in the aggregate, is to compare them with expenses of utilities operated under quite similar conditions. Such a comparison will be shown a little later.

Another point that was dwelt upon was the fact that some of the expenditures which should have been charged to the property and plant account were improperly charged to operating accounts so that the annual expense of carrying on the business appears to be greater than it actually is.

This improper method of dealing with some of the expenditures, of course, had also the effect of keeping down the book value of the plant and we have concluded, therefore, that the difference between the appraised value and book value is accounted for, at least partially, by this fact. In dealing with the value of the plant, the conclusion was that the book account should not be considered binding upon the company in fixing a fair value, other evidence pointing quite conclusively to a higher value. The effect of this is to allow, as capital investment, some of the expenditures classified by the respondent as an operating expense. As it is clearly unreasonable to allow the expenditures in both capital and operating accounts, some method must be adopted by which duplication can be avoided. While an audit of the books would probably disclose quite fully the proper division between investment and operation, it is not very apparent that the matter is of sufficient importance, in this case, to justify the considerable expense thereof. Another method has already been suggested, namely, a comparison of operating expenses of this and other plants. A comparison of the expenses of the respondent's business and of other small steam operated electric utilities shows that the total direct operating expense was 11.03 cents per kilowatt hour for the electric plant at Omro and that the average for the others was 7.79 cents. The trouble with this comparison is that it does not reveal to what extent the difference in operating cost is influenced by wages and salaries, improper allocation of expenditures for operation and construction, and inefficiency arising from a difference in the station load and engine capacity; but, in the absence of exact figures, it furnishes important evidence for consideration in reaching a conclusion.

The Commission has carefully estimated a fair allowance for operating labor, materials, taxes, depreciation and interest and has come to the conclusion that \$4,196 is sufficient for dusk-to-midnight service such as the respondent has furnished. Under usual conditions this figure would be divided about as follows: wages, salaries and materials,

\$2,823; taxes, \$148; depreciation, \$420; and interest, \$805. Similar estimates have been made for all-night and continuous service. These indicate that the total cost of all-night service, assuming a conservative allowance for additional business, would be \$4,911, and for continuous service \$6,113.

Upon comparing these several figures for expenses with the present actual earnings and with the earnings estimated for all-night and continuous service, we reach the following conclusions:

(1) If the present condition of service, i. e., dusk-to-midnight operation, be continued, some reduction in the rates for service would be warranted;

(2) If all-night, dusk-to-dawn service be rendered, the present schedule of rates would just about meet a fair allowance for operating expenses and interest;

(3) If continuous service be rendered, a material increase in the rates would be required.

The testimony adduced upon the hearing shows that the residents of Omro desire all-night service at the existing rates in preference to the present service at lower rates or continuous service at higher rates. This preference, together with the fact that convenience only rather than necessity is shown to require day service, leads the Commission to conclude that an order establishing dusk-to-dawn service at rates approximating those now in force is the proper solution for this action.

RATES NOW EFFECTIVE.

The rates on file and now effective for service rendered by the respondent are as follows:*

* * * * *

STREET LIGHTING SERVICE.

A copy of the street lighting contract between the city of Omro and the Omro Electric Company shows that the city contracted for one arc lamp and eighty 32 candle-power carbon incandescent lamps for \$100 per month and for such additional lamps as the city might require at

* Rate schedule omitted.

\$5.42 per month for each additional arc lamp, \$1.20 per month for each additional 32 candle-power carbon lamp, and 80 cents per month for each additional 16 candle-power carbon lamp. The contract was entered into 9 years ago since which time tungsten lamps have been developed for general use. It appears that the respondent has substituted 40 watt or 32 candle-power tungsten lamps for all of the 16 and 32 candle-power carbon lamps but bills the service on the basis of one arc lamp, twenty-nine 16 candle-power and sixty-eight 32 candle-power carbon lamps according to the following schedule of monthly charges:

1 arc lamp	\$4 00	\$4 09
29 16-candle-power carbon lamps.....	80	23 20
63 32-candle-power carbon lamps.....	1 20	81 60
<hr/>		
TOTAL		\$108 39

An apportionment of the expenses between commercial and street lighting service has been made from which it is found that the rate for the tungsten street lamps may be reasonably reduced to \$12.48 per lamp per year if the present moonlight schedule, from dusk to midnight, be continued. Street lighting service would cost the city \$104.88 per month, according to this rate, as shown by the following figures:

1 arc lamp at.....	\$4 00	\$4 00
97 40-watt tungstens	1 04	100 98
<hr/>		
TOTAL		\$104 98

This is a reduction of about 3.5 per cent. from the rates now charged under the contract.

It appears that the village might desire street lighting service on an all-night-moonlight schedule when the operating period is increased, in which event the rate should be advanced to \$15.00 per lamp per year for the tungsten lamps and \$60.00 per year for the arc lamp to cover the added expense of operation.

COMMERCIAL SERVICE.

The commercial meter rates which should be put into effect are as follows:

15 cents net or 16 cents gross for first 30 kilowatt-hours per month.

12 cents net or 13 cents gross for next 60 kilowatt-hours per month.

9 cents net or 10 cents gross for all over 90 kilowatt-hours per month.

The utility's report for the year ending June 30, 1914, shows that 42 out of a total of 141 customers are supplied with service at flat rates. The respondent desires that an order be made authorizing it to set aside its flat rates and to place all consumers on the authorized meter rates. The Commission has found repeatedly that flat rates lead to waste of service and inequality of charges and has been inclined to authorize the continuation of such charges only when unusual conditions require it. The conditions, insofar as the application of meter rates is concerned, do not appear to be unusual in this case and the respondent is ready and willing to furnish the meters. The Commission will therefore authorize the abandonment of the respondent's flat rates, and the meter rates which will be ordered will apply to all commercial service.

The present schedule of rates provides for a meter rental of 25 cents per month, which charge is added to the bill for current consumed. The meter rental provision will be set aside and a minimum monthly charge of \$0.75 will be substituted for it.

As a superficial examination of this proposed schedule might suggest that an increase in rates is contemplated because the first step of the proposed schedule shows a gross rate of 16 cents per kilowatt hour, it should be pointed out here that the maximum net rate is to remain at 15 cents per kilowatt hour. The gross rates become effective only upon failure of the consumer to pay monthly bills within a reasonable time. It may be seen, upon referring to the schedule of meter rates now in force, that some difference exists in the discounts which apply on bills for residence and business service. It is intended that this difference shall be wiped out by the new schedule. This smoothing out of the inequalities of the schedule and the substitution of a minimum charge in place of a meter rental will result in a small increase in bills which heretofore have been less

than \$0.75 per month and in residence bills ranging from \$4.00 to \$6.30 per month. Otherwise, the new rate will effect some reduction as the following table indicates:

TABLE IV.
COMPARISON OF MONTHLY BILLS.
NET MONTHLY BILLS.

<i>Kilowatt hours per month</i>	<i>Monthly bills under new schedule</i>	<i>Business bills under present schedule, in- cluding meter rental</i>	<i>Residence bills under present schedule, in- cluding meter rental</i>
2.....	\$0 75	\$0 55	\$0 55
3.....	75	70	70
4.....	75	85	85
6.....	90	1 15	1 15
8.....	1 20	1 45	1 45
10.....	1 50	1 75	1 75
15.....	2 25	2 50	2 50
20.....	3 00	3 25	3 25
25.....	3 75	3 60	3 60
30.....	4 50	4 27	4 75
35.....	5 10	4 91	5 25
40.....	5 70	5 63	5 94
45.....	6 30	6 30	6 65
50.....	6 90	6 97	7 36
55.....	7 50	7 65	8 03
60.....	8 10	8 32	8 79
65.....	8 70	9 00	9 00
70.....	9 30	9 67	9 67
75.....	9 90	10 35	10 35
80.....	10 50	11 03	11 03
85.....	11 10	11 70	11 79
90.....	11 70	12 37	12 37
95.....	12 15	13 05	13 05
100.....	12 60	13 73	12 96

REFUNDS.

The petitioners request that the respondent be required to refund to the consumers any and all moneys collected from them in excess of a reasonable charge for service heretofore furnished. It has not been shown, nor do we find, that the rates on file with the Commission are not the respondent's lawful rates. The petitioners make no claim

that the respondent's charges are not in accord with the schedules on file but appear to rest their claim for refund upon a difference between actual and reasonable charges. Even if the Commission should now find that the respondent's rates are excessive for the service which it renders, the Commission's order would be incompetent to grant to the petitioners any refund on account of past services. Since the Commission's order as to rates can deal only with future charges, that portion of the petition which relates to refunds must be dismissed.

It is, therefore, ordered, That the Omro Electric Light Company, respondent, operate its plant and furnish electric service therefrom in the village of Omro from dusk of each and every day until dawn the following day.

It is further ordered, That the respondent set aside its schedule of flat rates and meter charges now in effect for electric service and substitute in lieu thereof the following schedule, deemed just and reasonable.

COMMERCIAL LIGHTING.

Minimum monthly charge, \$0.75.

Meter rates:

- First 30 kilowatt-hours per month 15 cents net or 16 cents gross.
- Next 60 kilowatt-hours per month 12 cents net or 13 cents gross.
- All over 90 kilowatt-hours per month 9 cents net or 10 cents gross.

Discount:

The difference between the gross and net rates shall constitute a discount for prompt payment of bills.

STREET LIGHTING.

Moonlight, Dusk-to-midnight Schedule:

3.5 ampere 240 volt arc lamp at.....	\$48 00 per year
40 watt tungsten lamps at.....	12 48 per year

Moonlight, All-night Schedule:

3.5 ampere 240 volt arc lamp at.....	60 00 per year
40 watt tungsten lamps at.....	15 00 per year

It is further ordered, That the petition, insofar as it relates to refund for excessive charges, be, and the same is hereby, dismissed.

American Telephone and Telegraph Company
Legal Department
15 Dey Street, New York, N. Y.

COMMISSION LEAFLET No. 44

Recent Commission Orders, Rulings and Decisions
from the following States:

California	New Jersey
Illinois	New York
Indiana	Ohio
Maine	Oregon
Missouri	Washington
Nebraska	Wisconsin
Nevada	Wyoming

and from the
District of Columbia
and
Interstate Commerce Commission
and
Canada

AUGUST 1, 1915

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PART I
COMMISSION ORDERS, RULINGS AND DECISIONS
DIRECTLY AFFECTING TELEPHONE AND
TELEGRAPH COMPANIES.

INTERSTATE COMMERCE COMMISSION.

ORDER, INSTRUCTIONS AND FORMS* PERTAINING TO PURCHASE
OF MATERIALS, PRICES PAID AND RATES OF COMPENSATION
PAID FOR LABOR TO BE FILED BY CLASS A AND CLASS B
TELEPHONE COMPANIES.

Valuation Order No. 18.

Dated May 5, 1915.

Filing of Schedule Showing Purchases, Net Price Thereof and Rate of
Compensation Paid Employees Ordered.

ORDER.

The subject of purchases, and the prices paid for such purchases, and the rates of compensation paid employees by all Class A and Class B telephone companies, being under consideration,

It is ordered, That every Class A and Class B telephone company owning or operating, in whole or in part, a telephone line, whose property is to be valued under the valuation act of March 1, 1913, and every receiver or operating trustee of any such telephone company shall, on or before September 30, 1915, file with the Commission, at its office in Washington, D. C., a schedule showing the purchases of new material made and net prices paid for such purchases, and the rates of compensation paid its employees, in the manner prescribed on the accompanying D. V. Forms Nos. 425 to 494, inclusive, which D. V. Forms are included in and

* Copies of forms omitted.

made a part of this order,* and complying with the following instructions:

D. V. Forms Nos. 425 to 493, inclusive:

1. No labor, other than that actually paid for by the telephone company for inspection, and included in the column "Inspection," and other than that actually paid for by the telephone company and included in the column "Freight paid," shall be shown or included in any column on these forms.

2. Under "Freight paid," state only freight actually paid by the telephone company.

3. Under "Commission paid for purchasing," state only commission actually paid by the telephone company for the purchase of any article or articles, and not included in salaries or expenses of a purchasing department.

4. Fill each column of the forms, by entering the information called for; otherwise by the notation "Unknown" or "None." The telephone company may give additional information or make such explanation as it desires.

5. If the prices given were determined by competitive bids, so state.

6. The name and title of the person compiling the data shall be given in the space provided for that purpose, and the completed data shall be certified as "Correct," with the personal signature and title of the person so certifying, on each form.

7. The reports shall be typewritten on white, tough paper.

D. V. Form No. 494:

Show in column "Remarks" the number of hours included in "Rate per day." Follow instructions 4, 6 and 7.

Dated May 5, 1915.

* Copies of forms omitted.

CALIFORNIA.

Railroad Commission.

IN THE MATTER OF THE APPLICATION OF THE CITY AND COUNTY OF SAN FRANCISCO, BAY CITIES HOME TELEPHONE COMPANY AND THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY FOR AN ORDER AUTHORIZING THE TRANSFER AND ASSIGNMENT OF A FRANCHISE, AND FOR A CERTIFICATE THAT PUBLIC CONVENIENCE AND NECESSITY REQUIRE THE EXERCISE OF SUCH FRANCHISE.

Application No. 1440 — Decision No. 2459.

Decided June 7, 1915.

Transfer of Franchise Approved — Certificate of Public Convenience and Necessity to Exercise Franchise Granted.

The Bay Cities Home Telephone Company sought authority to transfer to The Pacific Telephone and Telegraph Company a franchise, and The Pacific Telephone and Telegraph Company sought a certificate declaring that public convenience and necessity require the exercise by it of said franchise.

The franchise in question, granted to the Home Telephone Company of San Francisco by Ordinance No. 75, authorized the Home Telephone Company to construct and operate a telephone system in San Francisco. The franchise was for a term of fifty years and provided, *inter alia*, that the grantee should not, without the consent of the city and county of San Francisco, evidenced by an ordinance, sell or transfer its property or any of the rights granted by its franchise to any telephone utility then operating in San Francisco, nor should it enter into any agreement with such utility as to rates to be charged in San Francisco.

On July 1, 1910, the Home Telephone Company transferred all its property and franchise rights to Bay Cities Home Telephone Company, and on March 15, 1912, by agreement with The Pacific Telephone and Telegraph Company, Bay Cities Home Telephone Company executed a conveyance of all its property, except the franchise, to the Home Long Distance Telephone Company, which on the same date transferred to The Pacific Telephone and Telegraph Company all the property which it had acquired from the Bay Cities company. Since March 15, 1912, the franchise granted by Ordinance No. 75 had not been exercised.

A court action was brought to have the transfer of the property from the Bay Cities Home Telephone Company to The Pacific Telephone and Telegraph Company through the Home Long Distance Telephone Company set aside, but the court held that the provision of the ordinance purporting to forbid a transfer of telephone properties from the grantee of the franchise or its successors to any other telephone company engaged in the telephone business in the city and county of San Francisco at the time the franchise was granted, was void in that it undertook to deprive the grantee, its successors and assigns of the right granted by the Civil Code to sell the property of the corporation, except the corporate franchise, with the consent of persons holding two-thirds of the issued stock of the corporation. The case was appealed to the Supreme Court of California.

After the transfer of the properties referred to and the ensuing litigation, the parties agreed upon a compromise settlement, the terms of which were included in Ordinance No. 3018, adopted November 23, 1914. Therein provision was made for the dismissal of the appeal to the Supreme Court. Before approving the ordinance the mayor of San Francisco caused The Pacific Telephone and Telegraph Company to agree that in event of the purchase of the physical property and franchises of the telephone company within San Francisco, by condemnation proceedings or otherwise, no consideration should be paid for said franchises.

The Commission also considered the action taken by the voters of San Francisco relative to this matter.

Held: That the Commission should consent to the transfer of the franchise, and that a certificate of public convenience and necessity should be granted subject to these conditions, *inter alia*:

That the price paid for the physical properties of the Bay Cities Home Telephone Company should not be taken as representing for rate-making or any other purpose the real value of the property; that neither The Pacific Telephone and Telegraph Company nor any successor or assign should ever claim in any proceeding before the Railroad Commission, or any other public authority, any compensation or value for the franchise granted to the Home Telephone Company of San Francisco by Ordinance No. 75.

Dissenting Opinion of Commissioner Edgerton.

Commissioner Edgerton dissented because the franchise had been obtained through bribery.

Held: That although the contract is legally valid, the Commission should take the broadest possible view and determine whether, everything considered, public convenience and necessity would be best served by permitting the exercise of the rights and privileges under the franchise.

That it is against public interest to sanction a franchise which is tainted in its inception with official corruption.

That although the city would obtain a considerable sum of revenue in the aggregate if the application were granted, because of the provision that it shall receive 2 per cent. of the gross income obtained in San Francisco by The Pacific Telephone and Telegraph Company, every dollar thus obtained would come from the patrons of the company, because any rate-fixing body would be obliged to allow this 2 per cent. as an operating expense of the company.

APPEARANCES:

Thomas, Beedy and Lanagan, for Bay Cities Home Telephone Company.

Pillsbury, Madison and Sutro, for The Pacific Telephone and Telegraph Company.

Percy V. Long, city attorney, for city and county of San Francisco.

Daniel O'Connell, in propria persona.

OPINION.

This is an application by Bay Cities Home Telephone Company for an order authorizing the transfer to The Pacific Telephone and Telegraph Company of a franchise granted on October 3, 1906, by Ordinance No. 75 (New Series), of the city and county of San Francisco, and of The Pacific Telephone and Telegraph Company for a certificate declaring that the public convenience and necessity require the exercise by The Pacific Telephone and Telegraph Company of said franchise.

Ordinance No. 75 (New Series), of the city and county of San Francisco, grants to Home Telephone Company of San Francisco a franchise to construct, maintain and operate a telephone system in the city and county of San Francisco and to construct, maintain and operate poles, cables, underground conduits and other appliances through, along and under and in the public streets, alleys and highways of the city and county of San Francisco for the purpose of transmitting sound, signals and conversation by means of electricity or otherwise. The term of the franchise is fifty years. The franchise is granted on the following conditions:

1. That the telephone system to be constructed under the franchise be constructed, maintained and operated in accordance with the applicable provisions of the statutes of California and of the charter and ordinances of the city and county of San Francisco.

2. That work under the franchise shall commence within four months, and that thereafter, \$2,000,000 shall be expended in construction work within twelve months after the commencement of the work, \$3,000,000 within twenty-four months and \$4,000,000 within thirty-six months, and that the work shall be completed within three years after its commencement.

3. That 600 free telephones shall be supplied to the city and county of San Francisco, and that the same will be kept in good repair and working order during the term of the franchise without expense to the city and county of San Francisco, and that the city and county of San Francisco shall, during the life of the franchise, have the use, without expense to the city and county of San Francisco, of two continuous ducts throughout the entire length of all conduits laid by the company, or its assigns or successors, for the exclusive use of the fire alarm, fire patrol, police alarm and department of electricity service.

4. That the grantee of the franchise, its successors and assigns, shall pay to the city and county of San Francisco, as provided by the Broughton Act, for the first five years, 2 per cent. each year of the gross receipts from the exercise of the franchise rights.

We desire to draw particular attention to the fifth condition, reading as follows:

"That said grantee, his or its successors or assigns, shall not without the consent of the city and county of San Francisco, evidenced by ordinance duly passed by the board of supervisors thereof, sell or transfer its property or any of the rights or privileges authorized or granted by said franchise to any person, company, combination, trust or corporation now engaged in the telephone business in the city and county of San Francisco and shall not at any time enter into any agreements, directly or indirectly, with any person, company, combination, trust or corporation now engaged in the telephone business in the city and county of San Francisco

C. L. 44]

concerning the rates to be charged for telephone service in the city and county of San Francisco."

Then follow certain provisos which it is not necessary here to consider.

Home Telephone Company of San Francisco filed with the board of supervisors of the city and county of San Francisco a bond in the penal sum of \$250,000, to secure the due performance of the terms and conditions of the franchise awarded to it.

On July 1, 1910, Home Telephone Company of San Francisco conveyed to Bay Cities Home Telephone Company, one of the applicants herein, all its property, including the franchise granted by said Ordinance No. 75 (New Series). Bay Cities Home Telephone Company immediately entered into possession of the property and proceeded to operate the same and to exercise the franchise rights theretofore granted under said ordinance to Home Telephone Company of San Francisco.

On March 15, 1912, Bay Cities Home Telephone Company, under an arrangement with The Pacific Telephone and Telegraph Company, executed a conveyance to Home Long Distance Telephone Company of all its property except the franchise. On the same day, Home Long Distance Telephone Company executed a conveyance to The Pacific Telephone and Telegraph Company of all the property acquired by it from Bay Cities Home Telephone Company. The Pacific Telephone and Telegraph Company immediately entered into possession of the property described by these conveyances, and ever since March 15, 1912, has been in possession thereof, operating certain portions thereof as a part of its own telephone system in the city and county of San Francisco. Since March 15, 1912, the franchise granted by said Ordinance No. 75 (New Series), has not been exercised. It is now proposed to have the franchise follow the property which was formerly operated thereunder, into the hands of The Pacific Telephone and Telegraph Company.

After the transfer of the property by Bay Cities Home Telephone Company, through Home Long Distance Telephone Company, to The Pacific Telephone and Telegraph Company, the city and county of San Francisco brought an action in the Superior Court of the State of California in and for the city and county of San Francisco, against The Pacific Telephone and Telegraph Company and others, to have the transfer of the property set aside. The case was heard by Judge John F. Ellison, of Tehama County, sitting in San Francisco. In the course of his opinion, a copy whereof was introduced in evidence in this proceeding, Judge Ellison concluded that the provision in Ordinance No. 75 (New Series), purporting to forbid a transfer of telephone properties from the grantee of the franchise, its successors or assigns, to any other telephone company engaged in the telephone business in the city and county of San Francisco at the time the franchise was granted, was void in that it undertook to deprive the grantee, its successors and assigns, of the right granted by Sections 361-a and 540 of the Civil Code of this State to sell the property of the corporation, except the corporate franchise, with the consent of persons holding two-thirds of the issued stock of the corporation. In conclusion, Judge Ellison said:

“I find nothing in the provisions of the charter of the city and county of San Francisco that either expressly or by inference confers upon the city the power to place in the franchise the provision that the grantee thereof should not sell or dispose of its property. No law of this State conferred such power and the condition is clearly against the policy of the State as expressed in its statutes granting to telephone companies the power to sell their property.”

Thereafter, the city and county of San Francisco perfected its appeal from Judge Ellison's decision to the Supreme Court of this State, where the case is now pending.

The Pacific Telephone and Telegraph Company is now operating in San Francisco under a 50-year franchise granted by the board of supervisors of San Francisco on

March 24, 1890. This franchise was granted before the Broughton Act was enacted, and under its terms The Pacific Telephone and Telegraph Company is under no obligation to pay to the city and county of San Francisco any portion of its gross annual revenues. The city of San Francisco is given the right to use one continuous duct through the entire length of the conduits laid by the company, for the exclusive use of the fire alarm, fire patrol and police alarm service.

By a supplemental ordinance, The Pacific Telephone and Telegraph Company is obligated to supply to the city and county of San Francisco 600 free telephones.

After the transfers of property hereinbefore referred to and the litigation ensuing thereon, the parties finally agreed upon a compromise settlement, the terms whereof are contained in Ordinance No. 3018 (New Series), adopted by the board of supervisors of the city and county of San Francisco on November 23, 1914. Sixteen supervisors voted in favor thereof, one supervisor voted against the ordinance and one supervisor was absent. By this ordinance, the city and county of San Francisco consents to and ratifies the sale and transfer by Bay Cities Home Telephone Company of all its physical and tangible properties to Home Long Distance Telephone Company, and the sale and transfer by Home Long Distance Telephone Company of said physical and tangible properties to The Pacific Telephone and Telegraph Company. The city also consents to the transfer by Bay Cities Home Telephone Company to The Pacific Telephone and Telegraph Company, of the franchise granted to Home Telephone Company by Ordinance No. 75 (New Series), hereinbefore referred to. The city's consent and ratification is given on certain conditions, including the following:

1. The instrument conveying the franchise is to be filed in the office of the clerk of the board of supervisors of San Francisco within 60 days after the sale and transfer are approved by the Railroad Commission.

2. Within 60 days after the approval by the Railroad Commission, The Pacific Telephone and Telegraph Company is to file with the clerk of the board of supervisors of the city and county of San Francisco its duly executed agreement to pay to the city and county of San Francisco in the manner provided by said Ordinance No. 75 (New Series), two per cent. of that proportion of its gross toll receipts creditable to the San Francisco exchange, and accruing from telephones within the city and county of San Francisco, from and after December 1., 1914.

3. The Pacific Telephone and Telegraph Company is to file with the clerk of the board of supervisors of the city and county of San Francisco, within 60 days after approval of the sale and transfer by the Railroad Commission, a bond in the sum of \$250,000, to insure the fulfillment of each and every term of the franchise to be assigned to The Pacific Telephone and Telegraph Company.

4. The Pacific Telephone and Telegraph Company is to file with the clerk of the board of supervisors of the city and county of San Francisco, within 60 days after the approval of the sale and transfer by the Railroad Commission, an agreement that it will furnish to the city and county of San Francisco certain telephone service, including not to exceed 1,000 free telephones and the use through each street in which underground conduits are constructed or maintained, of two continuous ducts in which the city and county of San Francisco may install and maintain wires and cables for low voltage electric circuits.

5. The Pacific Telephone and Telegraph Company is to file with the clerk of the board of supervisors of San Francisco, within 65 days after the approval of the Railroad Commission, an instrument duly executed, surrendering and abandoning to the city and county of San Francisco the franchise granted to its predecessor, Pacific Telephone and Telegraph Company, by Ordinance No. 2186 on March 24, 1890.

6. The Pacific Telephone and Telegraph Company is to agree that the consent and ratification given by the ordi-

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nance shall in nowise be deemed a waiver or abridgement of the rights and powers of the city and county of San Francisco —

(a) To acquire at any time the physical properties and franchises of The Pacific Telephone and Telegraph Company located in San Francisco, by voluntary purchase or by proceedings in condemnation;

(b) To grant at any time a telephone franchise to any competing company; or,

(c) To establish, construct and operate a competing municipally owned telephone system.

The ordinance further provides that upon compliance with all its conditions, the principals and sureties on the bond for \$250,000 filed with the board of supervisors by Home Telephone Company of San Francisco on the passage of Ordinance No. 75 (New Series), shall be discharged and the appeal now pending in the Supreme Court from Judge Ellison's decision shall be dismissed as fully satisfied. The ordinance further provides that upon compliance with all its conditions, the city attorney of the city and county of San Francisco shall request the attorney general of California to dismiss an action brought in the name of the people of the State against The Pacific Telephone and Telegraph Company and tried at the same time as the action brought by the city and county of San Francisco.

The mayor of the city and county of San Francisco approved Ordinance No. 3018 (New Series), only after The Pacific Telephone and Telegraph Company entered into an agreement with the city and county of San Francisco, dated December 4, 1914, agreeing, in consideration of the city's consent being granted by ordinance,

“that in the event of the purchase hereafter by the city and county of San Francisco, through condemnation proceedings or otherwise, of the physical properties and franchises of said The Pacific Telephone and Telegraph Company within the city and county of San Francisco, no consideration whatever shall be paid for said franchises or any of them, and no franchise value shall, in any event, be allowed to said The Pacific Telephone and Telegraph Company, its successors or assigns, for said franchise, or any of them.”

The Pacific Telephone and Telegraph Company also agreed that it would exercise the franchise under and in compliance with all laws and ordinances now or hereafter in force with reference to the placing of electric wires and conductors under ground in the city and county of San Francisco, and all laws and ordinances relating to or regulating the placing, erection, use and maintenance of poles and wires in the city and county of San Francisco. It was further agreed that the agreement thus entered into should be made a part of any order which the Railroad Commission might thereafter make in the premises.

No referendum was invoked against Ordinance No. 3018 (New Series), and the ordinance became effective within the time prescribed by the city charter of San Francisco.

During the hearing of this application, a protest was made and the Commission's attention was drawn to the results of an election held March 29, 1912. At this election 21,168 votes were cast in favor of and 10,463 votes against a proposition worded on the ballot as follows:

"An ordinance determining and declaring that the public interest and necessity require the acquisition, construction, completion, and equipment of a public utility, a telephone system, by the city and county of San Francisco; that the cost thereof, in addition to the other expenses of the city and county, will exceed the income and revenue provided for the said city and county for any one year; and directing the board of public works to procure through the city engineer and to place on file with the board of supervisors, plans and estimates of the cost of original construction, completion and equipment of such public utility; and determining and declaring that the public interest and necessity require the acquisition by said city and county of San Francisco, of the telephone system of the Bay Cities Home Telephone Company, in said city and county of San Francisco; and determining and declaring that public interest and necessity require that any merger of the telephone systems of the said Bay Cities Home Telephone Company, and of The Pacific Telephone and Telegraph Company, be disapproved, rejected and defeated, and that said Bay Cities Home Telephone Company be not released from any of its contracts or other obligations to said city and county."

At the same election 20,492 votes were cast in favor of and 10,759 votes against a proposition worded on the ballot as follows:

"An ordinance calling and providing for a special election to be held in the city and county of San Francisco on the day to be set by the board of election commissioners, in conformity with Chapter III, of Article XI, of the charter of the city and county of San Francisco, for the purpose of submitting to the voters of said city and county a proposition, to-wit:

"A proposition to incur a bonded debt of the said city and county of San Francisco to the amount of \$6,000,000 for the acquisition by said city and county of San Francisco of an existing public utility, to-wit: the telephone system, works and property of the Bay Cities Home Telephone Company, a corporation, to be owned and controlled by the city and county of San Francisco for supplying to said city and county and to the inhabitants thereof, a means of communication by telephone and telegraph between all the inhabitants of the said city and county of San Francisco.' "

The second named ordinance failed to receive the required two-thirds vote.

City Attorney Percy V. Long, in an opinion dated February 26, 1912, advised the board of supervisors of San Francisco that these ordinances are invalid. Mr. William Thomas, attorney for Bay Cities Home Telephone Company, contends in this proceeding that, in view of the fact that the people did not approve the ordinance involving the issue of bonds, the first ordinance was thereby automatically rejected. Under the decision of Judge Ellison, it may further be urged that the ordinances are void for the reason that they apparently attempt to stop a transfer of property which had already been consummated. It will be noted that neither of the ordinances make any mention of the franchise granted by Ordinance No. 75 (New Series).

Without passing on the question of the validity of these ordinances, it will be sufficient to draw attention to the fact that if the people of the city and county of San Francisco desire to acquire and operate the existing telephone system, the machinery for such action has been provided by the legislature of California, and the decision on this application will in no way interfere with such acquisition.

All parties to this proceeding concur in admitting that the franchise granted by Ordinance No. 75 (New Series) is a valid franchise. The question now before this Commission is whether there is any valid reason why the com-

promise agreement which has been entered into between the city and county of San Francisco, Bay Cities Home Telephone Company and The Pacific Telephone and Telegraph Company, as set forth in said Ordinance No. 3018 (New Series), should not be sanctioned by the Railroad Commission in so far as the Commission's consent is necessary.

In this connection certain matters referring to the action of the board of supervisors of the city and county of San Francisco in voting to advertise for bids for the franchise which was later granted by Ordinance No. 75 (New Series) were brought to this Commission's attention. These matters transpired some 9 years ago. The present board of supervisors of the city and county of San Francisco, with full knowledge of these matters, by a vote of 16 to 1, with one supervisor absent, have concluded that the best interests of the city and county of San Francisco require the consummation of the arrangement herein set forth, and the mayor has approved their judgment. On the facts of this case, we hesitate to substitute our judgment for theirs and to withhold our approval to the compromise arrangement which they, with much care and thought, have entered into.

We have given careful consideration to this application and are of the opinion that the Commission's consent to the transfer of the franchise and the certificate of public convenience and necessity should be granted as applied for, subject to the conditions specified in the order.

The Pacific Telephone and Telegraph Company claims to have acquired from Bay Cities Home Telephone Company property of a value in excess of \$7,000,000. A portion of this property had been discarded and other portions are idle, while only a part of the property thus acquired is being actually used by The Pacific Telephone and Telegraph Company in the conduct of its business. The order herein will contain a condition to the effect that The Pacific Telephone and Telegraph Company shall file with the Railroad Commission a written agreement to the effect that the price at which this property was transferred shall not

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be taken before the Railroad Commission or any other public authority as representing the true value of the property.

The franchise is being transferred without the payment of consideration and The Pacific Telephone and Telegraph Company agrees that it will not urge the sum of \$25,000 originally paid by Home Telephone Company of San Francisco as justifying any claim to a franchise value.

We are of the opinion that the application should be granted, subject to the conditions specified in the order.

ORDER.

City and county of San Francisco, Bay Cities Home Telephone Company and The Pacific Telephone and Telegraph Company having applied to the Railroad Commission for an order authorizing the transfer from Bay Cities Home Telephone Company to The Pacific Telephone and Telegraph Company of the franchise granted to Home Telephone Company of San Francisco by Ordinance No. 75 (New Series), of the city and county of San Francisco, and for a certificate declaring that the public convenience and necessity require the exercise by The Pacific Telephone and Telegraph Company of the rights granted by said ordinance, and a public hearing having been held on said application, and the application having been submitted and being now ready for decision,

It is hereby ordered, That Bay Cities Home Telephone Company be, and the same is hereby, authorized to transfer and assign to The Pacific Telephone and Telegraph Company that certain franchise which was granted to Home Telephone Company of San Francisco by Ordinance No. 75 (New Series), of the city and county of San Francisco, but only on the conditions hereinafter stated; and,

The Railroad Commission hereby declares that public convenience and necessity require the exercise by The Pacific Telephone and Telegraph Company of the rights granted to Home Telephone Company of San Francisco

by said Ordinance No. 75 (New Series), but only on the conditions hereinafter specified.

The foregoing order and declaration are made subject to the following express conditions:

1. Within 60 days from the date of the order herein, The Pacific Telephone and Telegraph Company shall file with the Railroad Commission a certified copy of each and every document to be filed by said company with the clerk of the board of supervisors of the city and county of San Francisco, as provided by said Ordinance No. 3018 (New Series), in full compliance by The Pacific Telephone and Telegraph Company with the provisions of said ordinance.

2. Within 60 days from the date of this order, The Pacific Telephone and Telegraph Company shall file with the Railroad Commission a stipulation executed on behalf of said company by its officers thereunto duly authorized by a resolution of its board of directors, agreeing as follows:

(a) That the price heretofore paid for the physical properties of Bay Cities Home Telephone Company in the city and county of San Francisco shall not be taken before the Railroad Commission or any other public authority as representing for rate making or any other purpose, the real value of the property.

(b) That neither The Pacific Telephone and Telegraph Company nor any successor or assign, will ever claim in any proceeding before the Railroad Commission or any other public authority any compensation or value for the franchise granted to Home Telephone Company of San Francisco by said Ordinance No. 75 (New Series).

3. That The Pacific Telephone and Telegraph Company will at all times, during the life of said franchise, exercise the same in compliance with all laws and ordinances now in force or that may hereafter be adopted, providing for the placing of electric wires and conductors under ground in the city and county of San Francisco, and all laws and ordinances relating to the placing, erection, use and maintenance of poles and wires in said city and county of San Francisco.

4. The Railroad Commission hereby reserves the right to revoke this order if The Pacific Telephone and Telegraph Company fails to comply with any of the provisions of its settlement with the city and county of San Francisco, as set forth in said Ordinance No. 3018 (New Series), and in the agreement dated December 4, 1914, between The Pacific Telephone and Telegraph Company and the city and county of San Francisco.

Dated at San Francisco, California, this seventh day of June, 1915.

DISSENTING OPINION.

EDGERTON, *Commissioner*:

I dissent from the action taken by my associate Commissioners in granting this application.

It is admitted that the majority of the supervisors who granted this franchise in 1906 were bribed to take favorable action thereon. In fact, a majority of the supervisors confessed before the grand jury to the acceptance of such bribe for such purpose.

Applicants urge that no consideration should be given by this Commission to corruption in the granting of this franchise because it has been held by our highest courts that a franchise is not invalidated by reason of the bribing of public officials to make the grant.

I readily concede that this is the position of our courts and that, therefore, this franchise may, for the purpose of this proceeding, be determined to be valid. It is true that in view of the decision of the courts, the city would be bound to recognize this franchise, even though it was obtained through bribery. I do not concede, however, that the function of this Commission in passing upon franchises is the determination of their legality.

The Public Utilities Act, Section 50(b), provides:

"No public utility of a class specified in subsection (a) hereof shall henceforth exercise any right or privilege under any franchise or permit hereafter granted, or under any franchise or permit heretofore granted but not heretofore actually exercised, or the exercise of which has been suspended for more than one year, without first having obtained from

the Commission a certificate that public convenience and necessity require the exercise of such right or privilege."

Also it is provided in Section 51(a):

"No . . . telephone corporation . . . shall henceforth sell, lease, assign, mortgage or otherwise dispose of . . . any franchise or permit or any right thereunder . . . without having first secured from the Commission an order authorizing it so to do. . . ."

It will be noted that under the section of the Public Utilities Act first quoted, public convenience and necessity is made the sole basis of the Commission's judgment as to the issuance of an order authorizing the exercise of rights and privileges under a franchise and that under the portion of the last section just above quoted, no basis at all is laid down upon which the Commission should issue an order authorizing the transfer of a franchise belonging to a public utility corporation.

It is clear that it was the intention of the Legislature to empower the Commission to consider matters beyond and above the mere legality of a franchise, for the courts have been, and now are, the tribunals to determine this matter, and if the Commission gave an opinion or an order attempting to determine the validity of a franchise its conclusion would not be final or binding as against the conclusion of the courts.

Obviously, therefore, upon an application of this kind the Commission is called upon to take the broadest possible view of the matter and determine whether, everything considered, public convenience will be best served by permitting the exercise of rights and privileges under a franchise. Therefore, this Commission, if it authorizes the transfer of this franchise and the exercise of rights conferred therein, must declare that public convenience and necessity will be best served by the exercise of rights under a franchise which was fraudulently granted by the official representatives of the very public whose needs we are considering.

I hold that it is against public interest to sanction a franchise which is tainted in its inception with official corruption.

The history of franchise grants in America has been black enough. It has happened repeatedly that corporations obtaining franchise privileges through bribery and fraud have been sustained in their possession. They have been allowed to retain the benefit of their own wrongdoing.

I firmly believe that the main value of the provision of the Public Utilities Act which gives this Commission the power to grant or withhold certificates of public convenience and necessity lies in the check which it gives the State upon municipal franchise grants. I do not urge that by denial of this application official corruption would be prevented, but I do insist that it would, at least, largely do away with the incentive for corruption.

And I further believe that the State should take this, its first opportunity, to declare its unwillingness to place the stamp of approval upon a franchise known to have been obtained through bribery.

It is true, as urged by applicants, that the city of San Francisco would obtain a considerable sum of money in the aggregate if this application were granted because of the provision that it shall receive two per cent. of the gross income of The Pacific Telephone and Telegraph Company obtained in San Francisco, but it must be remembered that every dollar represented by this two per cent. must come from the pockets of the patrons of the telephone company because any rate fixing body must allow this two per cent. as an operating expense of the company. Hence this two per cent. would not come from the corporation, finally, but from the people. Nor are we here confronted with a condition where the telephone service in San Francisco will be affected by a decision of this matter. The Home company has long ceased doing business and The Pacific company is now operating in San Francisco and will continue to operate if this application were not granted.

Dated at San Francisco, California, this seventh day of June, 1915.

DISTRICT OF COLUMBIA.

Public Utilities Commission.

WALTER S. CARTER v. THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY.

Decided April 28, 1915.

Practice of Charging Subscribers for Periods During Which Service is Suspended for Non-payment Held Not Unreasonable.

INFORMAL RULING.*

* * * * *

With further reference to your complaint of January 11, 1915, that you were required by the Chesapeake and Potomac Telephone Company to pay for service during the periods of time when your service was cut off by the company, I am directed by the Commission to inform you that your case has been thoroughly investigated and the matter was referred to the telephone company. A copy of the company's reply† is enclosed herewith.

The Commission does not find this practice of the telephone company unreasonable or discriminatory and, therefore, declines to take action requiring the company to omit from its bills a charge for the period of time during which service is cut off on account of non-payment of bills.*

April 28, 1915.

* Letter of J. L. Schley, Executive Officer, to Walter S. Carter, April 28, 1915.

† * * * Mr. Carter is receiving residence telephone service under a flat rate contract, his telephone having been first installed on December 7, 1912, at 2819 North Capitol Street, and removed to 115 K Street, N. W., without removal charge, on October 20, 1914.

Our records show that service was denied Mr. Carter on the ground of non-payment of bill at 11:40 A. M. on March 19, 1914, and restored at 10:40 A. M. on March 20, 1914. Outgoing service was again denied on December 18, 1914, and outgoing and incoming service were both denied at 10:50 A. M. on December 23, 1914, and restored at 10:40 A. M. on December 30, 1914, at which time he paid \$4.00 of the total of \$9.30, for which he was delinquent. Thus our records show only two periods of denial of service instead of four, as alleged in the complaint.

Mr. Carter's account is now delinquent to the amount of \$9.76, of which \$4.00 being arrears for the month of December, 1914, \$4.00 being arrears for the month of January, 1915, and \$1.76 being arrears for tolls and telegrams.

The contract under which Mr. Carter is receiving service provides for equal monthly payments in advance, the company reserving the right to terminate the subscriber's rights thereunder, sever the connection and remove the instrument upon non-payment of any sum due. The contract further provides that if service is interrupted otherwise than by the negligence or wilful interference of the subscriber a refund for the period of interruption be made to the subscriber. For the periods for which Mr. Carter was denied service he is not entitled to any refund under his contract and the general practice which this company has had in force for many years in handling its delinquent patrons, which is as follows:

If an account remains unpaid on the fifteenth of the month the patron is duly notified thereof and if he fails to pay, his service is denied for outgoing local calls, except emergency calls, such as fire, police, ambulance, etc., but his incoming calls are not interrupted. The subscriber is again notified and if he remain delinquent for five days, his entire service is denied, a notice of cancellation of his contract is sent to him and if he fails to pay his bill his contract is canceled and the telephone removed.

Inasmuch as the denial of service under such circumstances is entirely owing to the fault of the patron and the station equipment is left on his premises and remains connected with the central office so that service can be immediately restored upon the patron's complying with his contract by the payment of his account, the company does not feel that such patron is entitled to any rebate or refund for the period of denial.

Of course, under the terms of the contract the company would have the right to remove the telephone immediately when any bill is not promptly paid in advance, but this would work a hardship in many cases to the individual delinquent subscriber and would lessen the value of the service to the other patrons of the company who are interested in the company's retaining as many telephone stations as possible.

If a refund were made for the period of denial of service, any patron by becoming delinquent at stated intervals throughout the year would be enabled to receive his service for less than the minimum annual charge therefor, and thus would in effect secure a rebate at the expense of those

who are willing to and do comply with the terms of their contracts and the regulations of the company. Furthermore, the granting of a rebate would necessarily increase the collection costs of the company and this increase would have to be absorbed in the operating costs of the company and thus be borne by the great body of subscribers who pay their bills promptly. Therefore, if wholly by a subscriber's fault his service be curtailed and a refund be allowed, the promptitude of collection is retarded, the costs of collections are increased and thrown upon the patrons as a whole and a door is opened by which discriminatory rates and rebates may be introduced.

This company has given careful consideration and study for years to this matter of protecting itself and its patrons generally from delinquents, and believes that its general practice as above outlined is reasonable, equitable and just, and the best and most feasible yet devised, and that the administration of it causes relatively little irritation or friction.

The company believes that there must be room for administrative judgment and discretion in handling its collection routine and delinquent accounts, and, therefore, that the matter is not one that could be crystalized into an arbitrary and inflexible rule whose administration would not, in instances, work great and unnecessary inconvenience and hardship. For which reason, the company feels that it would be unwise to embody a regulation governing the same in a tariff to be published and filed with your Commission, as suggested in your letter.*

* Letter of J. L. Swayze to Public Utilities Commission of the District of Columbia, January 29, 1915.

ILLINOIS.

State Public Utilities Commission.

J. P. KAVANAGH v. CHESTERFIELD TELEPHONE COMPANY.

Case No. 3218.

Decided June 3, 1915.

Business Rate Applicable to Telephone Installed in Residence where Place of Business and Residence are in Same Premises.

Complaint alleged that the respondent was discriminating against the complainant in that (1) it refused to furnish him telephone service in his residence unless he should pay \$1.50 per month although the regular residence rate was \$1.00 per month, (2) that it charged him 30 cents for a toll message from Hettie to Springfield although the regular toll rate was only 25 cents, and (3) that it refused to send a messenger to deliver messages to him or to request him to come to a pay station to receive messages.

Complainant had sought to have the respondent install a telephone in his residence, but as the complainant's place of business was also in his residence, the respondent refused to install a telephone unless the complainant would pay the regular business rate of \$1.50 per month.

Held: That where the place of business and the residence of a subscriber are in the same premises and no telephone is installed in the place of business, the business rate should be charged for the telephone installed in the residence.

Complaint as to Discrimination in Toll Rates Dismissed for Want of Proper Party Respondent.

Held: That as the toll rate from Hettie to Springfield was fixed by the Macoupin County Telephone Company, not by the respondent, and as the Macoupin County Telephone Company was not a party to this proceeding and as the reasonableness of the rate was not attacked, that portion of the complaint concerning the Hettie-Springfield toll rate should be dismissed.

Messenger Service Ordered Furnished Without Discrimination.

Ordered, That the respondent furnish messenger service without discrimination where non-subscribers are called for by patrons of the telephone company and the latter are willing to pay for messenger service.

OPINION AND ORDER.

The complaint in this case sets forth that the complainant, J. P. Kavanagh, is a physician and surgeon at Hettic, Illinois; that the respondent telephone company is a public utility and is subject to the jurisdiction of this Commission.

The complainant charges that the respondent company is guilty of certain discriminations in its rates and service; that at the present time the complainant has no telephone; that he has made an application to the respondent for a telephone and has been told that the rate would be \$1.50 per month, whereas the regular rate for a residence telephone at Hettic, Illinois, is \$1.00 per month. The complainant further says that he is being charged 30 cents for a toll message from Hettic to Springfield, Illinois, and that the rate on a toll message from Springfield to Hettic is 25 cents. The complainant further charges that the telephone company insists it is under no obligation to send a messenger for him to answer calls that may come for him, and that the respondent makes no effort to deliver telephone messages to him. Several specific instances of alleged defective service and discrimination are mentioned, dating back to May, 1912.

A hearing was held before the Commission at Springfield on January 20, 1915. The complainant appeared in person and *Ben B. Boynton*, attorney, appeared for the respondent.

At the close of the hearing an informal conference was held, at which a representative of the Commission was present. At the conference it appeared that the principal matters of complaint could probably be adjusted amicably by the parties. Therefore, a decision of the Commission was held in abeyance as requested by the interested parties. Later on the Commission was notified by the complainant that no adjustment had been made, thus making an order of the Commission necessary.

It appears from the evidence in this case that in August, 1914, the complainant ceased to be a subscriber of the telephone service of the respondent company, and the tele-

phone instrument was removed from his premises. During the time complainant was a subscriber he paid the regular residence rate of \$1.00 per month.

Later on he made application to the telephone company to have a telephone re-installed in his residence and was then informed that inasmuch as his place of business was also located in his residence, he would be required to pay the regular business rate of \$1.50 per month. This the complainant refused to do, and he now insists that he is entitled to telephone service at the residence rate.

Conference Ruling No. 13,* adopted by this Commission, and which became effective October 1, 1914, provides in part as follows:

"e. Where the place of business and the residence of a subscriber are in the same premises, and no telephone is installed in the place of business, the business rate should be charged for the telephone installed in the residence."

The evidence shows that the complainant's office and only place of business is located in his residence, and, therefore, under the above conference ruling, it is proper that he should be charged the business rate if he desires telephone service.

As to the portion of the complaint regarding the toll rate from Hettic to Springfield, the evidence shows that that rate is one fixed by the Macoupin County Telephone Company, and that the respondent company has no voice in fixing this rate. Inasmuch as the Macoupin company is not a party to this proceeding and as the reasonableness of said rate is not attacked, that portion of the complaint will be dismissed.

In regard to messenger service, the complainant testified that there were times when subscribers of the telephone company called the central office of the respondent and requested that a messenger be sent for complainant; that the party calling was willing to assume the charge for messenger service, but that the operator did not send for complainant. It appears, however, that no report of such

*See Commission Leaflet No. 34, p. 1008.

occurrence was ever made by either the party calling or by Dr. Kavanagh to the manager of the telephone company. Said manager testified he had no knowledge of any such occurrence; that it has been the custom of this company, and it now stands ready and willing, to furnish messenger service where the party calling is willing to pay the charge for such messenger.

In view of the fact that the respondent holds itself out as ready and willing to furnish messenger service where non-subscribers are called for by patrons of the company, and the latter are willing to assume and pay the messenger service charge, the company should treat all alike and there should be no discrimination in the matter of messenger service.

Several other matters are mentioned in the complaint, but in view of the fact that no evidence was offered in support thereof, it will not be necessary to enter into a discussion thereof.

It is, therefore, ordered, That under the circumstances of this case respondent company shall furnish messenger service without discrimination where non-subscribers are called for by patrons of the telephone company, and the latter are willing to pay for such service.

It is further ordered, That the complaint in this case in all other particulars be, and the same is hereby, dismissed.

By order of the Commission this third day of June, 1915, dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF THE HUDSON TELEPHONE COMPANY FOR AUTHORITY TO CHANGE RATES.

Case No. 3467.

Decided June 3, 1915.

**Discrimination in Favor of Subscribers Owning Telephones Eliminated —
Additional Classifications Authorized — Increase in Rates for
Clubs, Libraries, Churches, etc., Authorized.**

OPINION AND ORDER.

The petition in this case sets forth that the petitioner is a public utility engaged in the management and opera-

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tion of a telephone system in the village of Hudson, McLean County, Illinois, and in the vicinity thereof. The petition further sets forth that the rates of the petitioner now in force and effect are as follows:

Business telephones where subscriber owns the 'phone..	\$6 00 per year
Residence telephones where subscriber owns the 'phone..	5 00 per year
Residence telephones where the company owns all equipment	12 00 per year
Business extension telephones.....	3 00 per year
Residence extension telephones.....	2 50 per year
Extension bells either business or residence.....	1 00 per year
Clubs, lodges, halls, libraries and churches.....	5 00 per year
Moving telephones in same building.....	50
Moving telephones to another building.....	1 00
Non-subscribers, per call.....	10

Application is made for authority to eliminate the present discrimination as shown by the above schedule of rates and to put into effect the following rates:

Business telephones	\$18 00 per year
Residence telephones, private line.....	15 00 per year
Residence telephones, party line.....	10 00 per year
Business extension telephones.....	5 00 per year
Residence extension telephones.....	2 50 per year
Extension bells, business or residence.....	1 50 per year
Moving telephones in same building.....	50
Moving telephones to another building.....	1 00
Non-subscribers, per call.....	10
Clubs, lodges, halls, libraries and churches to be furnished service at residence rates.	

A hearing was held at the office of the Commission at Springfield, March 16, 1915. *W. P. May*, president and general manager of the telephone company, appeared on behalf of the petitioner. No one appeared objecting, but several communications were received by the Commission protesting against the proposed increase in rates asked by the petitioner.

At the hearing the petitioner was not prepared to make a showing justifying the proposed increase in the rates of the company and thereupon abandoned the part of the

petition that asked for such increases. This action on the part of the petitioner leaves only the matter of discriminatory rates and charges to be disposed of by this order.

With respect to the rates now given to subscribers who own their own telephones this Commission, in Conference Ruling No. 15,* and in other orders heretofore made, has held that it is unlawful to grant any reduction from the regular rate on account of the subscribers owning the telephones, that the telephone company may purchase or rent such telephone instruments from its subscribers, but that a rate lower than the regular rate should not be allowed to such subscribers, that the company should furnish telephones whenever it becomes necessary to replace telephones now owned by subscribers and that all new installations of telephone instruments should be made by the company. It follows that the rate of \$6.00 per year now enjoyed by business subscribers and the rate of \$5.00 per year to residence subscribers who own their own telephones is clearly discriminatory and should be discontinued.

The rate of \$10.00 per year for party line residence telephone service appears to be a new rate and in accordance with Conference Ruling No. 14,† this rate may be made and shall become effective thirty(30) days after a schedule of the same shall have been filed with this Commission and posted in accordance with the terms of Sections 33 and 34 of "*An Act to Provide for the Regulation of Public Utilities.*"

The Commission having heard the evidence in this case, and being fully advised in the premises, finds that certain rates set forth in the present schedule of the petitioner and now charged by it are discriminatory and should be abolished.

It is, therefore, ordered, That the discriminatory rates and charges as shown by the application of the petitioner and as set forth in its present schedule of rates shall be

* See Commission Leaflet No. 37, p. 457.

† See Commission Leaflet No. 36, p. 228.

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discontinued and that the regular rates as set forth in the following schedule shall apply to all of the petitioner's subscribers.

Business telephones	\$12 00 per year
Residence telephones, private line.....	12 00 per year
Residence telephones, party line.....	10 00 per year
Business extension telephones.....	3 00 per year
Residence extension telephones.....	2 50 per year
Clubs, lodges, halls, libraries and churches.....	12 00 per year
Extension bells either business or residence.....	1 00 per year
Moving telephone in same building.....	50
Moving telephone to another building.....	1 00
Non-subscribers, per call.....	10

It is further ordered, That such changes in rates shall become effective as of the thirtieth day of June, 1915, and shall be filed, posted and published as provided by Sections 33 and 34 of an act entitled "An Act to Provide for the Regulation of Public Utilities."

By order of the Commission this third day of June, 1915, dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF THE CHRISTIAN COUNTY TELEPHONE COMPANY FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY TO CONSTRUCT, OPERATE AND MAINTAIN TELEPHONE LINES IN THE VILLAGE OF HUMPHREYS, ILLINOIS.

Case No. 3721.

Decided June 3, 1915.

Certificate of Public Convenience and Necessity to Extend Lines into Village Served Only by Rural Lines Granted Where Adequate Service Through the Extension of said Rural Lines Impossible.

OPINION AND ORDER.

The petitioner in this case is a corporation, organized under the laws of the State of Illinois, with its principal place of business at Taylorville, Illinois, and is engaged in

the operation and management of a general telephone system in Christian County. Hearing was held before the Commission at Springfield, Illinois, May 5, 1915. *E. A. Purcell* appeared for the petitioner. No one appeared objecting.

From the testimony presented at the hearing, it appeared that the village of Humphreys, which has a population of about three hundred, is adjacent to, and virtually a part of, the new town of Kincaid; that the only telephone service now furnished in the village of Humphreys is rural party line service in connection with the exchange that the petitioner operates in the city of Taylorville; that there is a considerable demand for telephone service in the village of Humphreys; that the village cannot be adequately and efficiently served through an extension of the rural lines from the city of Taylorville, and that the petitioner proposes to extend the telephone system now being installed in the village of Kincaid into the village of Humphreys, the petitioner having been granted a certificate of convenience and necessity to install, operate and maintain a telephone system in the village of Kincaid on April 2, 1914, under an order approved by the Commission in Case No. 2231.

It further appeared that the petitioner is the only telephone company operating in and around the village of Humphreys; that it is prepared to furnish an adequate and efficient telephone service in that community, and that public convenience and necessity require and demand an extension of the lines of the utility into the village of Humphreys in order that the public may be properly served.

The petitioner filed with the Commission a certified copy of an ordinance passed by the village board of Humphreys, Illinois, on March 15, 1915, granting franchise rights to the Christian County Telephone Company, and having made a satisfactory showing in this respect, and the Commission having considered the testimony and being fully advised in the premises,

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It is ordered, That a certificate of convenience and necessity for the construction, operation and maintenance of telephone lines in the village of Humphreys, Illinois, be granted by this Commission to said Christian County Telephone Company under Section 55 of an "*Act to Provide for the Regulation of Public Utilities*," approved June 30, 1913, and that such certificate be issued under seal of this Commission and authenticated by its Acting Secretary.*

By order of the Commission, this third day of June, 1915, dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF THE EASTERN ILLINOIS INDEPENDENT TELEPHONE COMPANY AND THE RECEIVERS, CENTRAL UNION TELEPHONE COMPANY FOR CONSENT TO, AND APPROVAL OF, SALE OF TELEPHONE PROPERTY IN THE CITY OF KANAKEE, ILLINOIS.

Case No. 3855.

Decided June 3, 1915.

Purchase of One-half Interest in Conduit to Avoid Duplication Approved.

OPINION AND ORDER.

Petition filed in the above entitled matter by the Eastern Illinois Independent Telephone Company, a corporation, with its principal place of business at Kankakee, Illinois, and David R. Forgan, Edgar S. Bloom, and Frank F. Fowle, Receivers, Central Union Telephone Company, a corporation, with its principal place of business at Chicago, Illinois, prays that an order be entered by the Commission, authorizing the Eastern Illinois Independent Telephone Company to sell, and the Receivers, Central Union Telephone Company, to purchase one-half interest in the under-

*A similar order was made in the *Matter of the Application of the Christian County Telephone Company for a Certificate of Convenience and Necessity to Construct, Operate and Maintain Telephone Lines in the Village of Bulpitt, Illinois*. No. 3723. Decided June 3, 1915.

ground conduit extending from manhole on Merchant Street, south of the Kankakee County Court House, into the basement of the Court House, and one-half interest in the interior conduit system of the Court House.

Petition sets forth that the Eastern Illinois Independent Telephone Company at this time has this conduit system, which provides for more than ample space for its need; that the Receivers, Central Union Telephone Company have no telephone service in the Court House and desire to provide the Court House with telephone service, and that in order to prevent a waste of investment in the way of duplicating the conduit system of the Eastern Illinois Independent Telephone Company, the Eastern Illinois Independent Telephone Company desires to sell, and the Receivers, Central Union Telephone Company desire to purchase, one-half interest in said underground conduit and said interior conduit system.

The petition having been considered by the Commission, and the Commission being fully advised in the premises, finds that the petition should be granted.

It is, therefore, ordered, That the Eastern Illinois Independent Telephone Company, of Kankakee, Illinois, be, and the same is hereby, authorized and permitted forthwith to sell, and that David R. Forgan, Edgar S. Bloom, and Frank F. Fowle, Receivers, Central Union Telephone Company, of Chicago, Illinois, be, and the same are hereby, permitted to purchase one-half interest in the underground conduit extending from manhole on Merchant Street, south of the Kankakee County Court House, into the basement of the Court House, and one-half interest in the interior conduit system of the Court House, the said sale and purchase to be made in all respects in strict accordance with the terms of the bill of sale, copy of which is attached to, and made a part of, the joint petition for approval of sale and purchase filed herein.

By order of the Commission, this third day of June, 1915, dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF THE FARMERS
MUTUAL TELEPHONE COMPANY, OF ALEXIS, ILLINOIS, FOR
AUTHORITY TO CHANGE RATES.

Case No. 3864.

Decided June 3, 1915.

**Discrimination in Favor of Subscribers Owning Telephones Eliminated
— Increase in Party Line Residence Rates Authorized.**

OPINION AND ORDER.

The petitioner, on March 26, 1914, filed an application for authority to increase rates, in order to provide sufficient revenue to pay the operating expenses of the utility, No. 2201, Farmers Mutual Telephone Company, application for authority to change rates, and on June 19, 1914, the Commission issued an order,* authorizing the petitioner to put into effect the following schedule:

Business telephones	\$10 00 per year
Residence telephones	7 00 per year
Two-party residence telephones.....	6 50 per year
Three to four-party residence telephones.....	6 00 per year
Switching charge for rural service subscribers.....	5 00 per year

Later it developed that the rates authorized by the Commission apply only to subscribers who own their telephones and that subscribers whose telephones are furnished by the company are charged a higher rate, in violation of the ruling of the Commission. Accordingly, the utility was ordered to file an application for authority to change rates, in order to discontinue discriminations.

Application was filed May 2, 1915, and sets forth that the rates or charges of the petitioner now in force and effect are as follows:

*See Commission Leaflet No. 35, p. 44.

Individual line business telephones — company furnishing the instrument.....	\$12 00 per year
Individual line business telephones — subscriber furnishing the instrument.....	10 00 per year
Individual line residence telephones — company furnishing the instrument.....	9 00 per year
Individual line residence telephones — subscriber furnishing the instrument.....	7 00 per year
Two-party line residence telephones.....	6 50 per year
Three to four-party residence telephones.....	6 00 per year
Switching charge for rural service subscribers, six or more subscribers on each line.....	5 00 per year

Application is made for authority to adjust the rates, in order to discontinue the difference or discrimination as between subscribers who own their telephones and subscribers whose telephones are furnished by the company, and to establish the following schedule:

Individual line business telephones.....	\$12 00 per year
Individual line residence telephones.....	9 00 per year
Two-party residence telephones.....	8 50 per year
Three to four-party residence telephones.....	8 00 per year
Switching charge for rural service subscribers, six or more subscribers on each line.....	5 00 per year

In the Matter of Rates and Charges Applicable to Subscribers Who Own Their Telephones, Conference Ruling No. 15,* and in other decisions heretofore made, the Commission held that it is unlawful to grant any reduction from the regular rate on account of subscribers owning their telephones. The above mentioned conference ruling also fixes the terms under which a telephone company may rent a telephone from the subscriber who owns the same.

It is, therefore, ordered, That the rates charged subscribers who own their telephones, as set forth in the application of the petitioner, Farmers Mutual Telephone Company, of Alexis, Warren County, Illinois, shall be discontinued and the regular schedule rate for the class of service

*See Commission Leaflet No. 37, p. 457.

furnished shall apply to all subscribers, without discrimination.

It is further ordered, That such change in rates shall become effective as of July 1, 1915, and the regular schedule rates shall be filed, posted and published by said petitioner as provided by Section 34 of an act entitled "*An Act to Provide for the Regulation of Public Utilities.*"

By order of the Commission, this third day of June, 1915, dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF THE VERMONT TELEPHONE AND EXCHANGE COMPANY FOR AUTHORITY TO CHANGE RATES.

Case No. 2850.

Decided June 17, 1915.

Increase in Switching Rates Authorized — Traffic Study Made.

Applicant sought authority to increase its rates for switching rural service subscribers from \$2.00 per year for those subscribers connected on lines "running from town to town" and \$2.25 per year for subscribers connected on "branch lines" to \$3.50 per year for all rural service subscribers.

The applicant submitted its statement of earnings and expenses and computed the cost of service per rural service subscriber at \$3.34 per annum. However, this computation was on a per station basis and did not take into consideration the fact that operating expenses in general vary in accordance with the volume and character of the traffic handled.

To determine the volume and character of the traffic, a three-day peg count was made of all originating calls, except "no answer" calls, time calls and miscellaneous inquiries which constituted a negligible part of the total traffic.

A tabulation of the results showed that 72 per cent. of the operating expenses, or \$818, was properly chargeable to rural service stations. Maintenance expense for the system was about \$900 per year. About one-seventh of the total number of lines were rural lines, so that one-seventh of the total maintenance cost, or \$128, was properly chargeable to rural service subscribers.

Held: That as there were 267 rural service subscribers, a rate of \$3.50 per subscriber per year for switching such subscribers was justified; and that such a rate would not produce any revenue in excess of the actual expenses properly chargeable to this service.

OPINION AND ORDER.

The application in the above entitled matter sets forth that the petitioner is a public utility engaged in the management and operation of a telephone system in and around the village of Vermont, Fulton County, Illinois; that it has in effect a rate of \$2.00 per annum for switching rural service subscribers, connected on lines "running from town to town," and a rate of \$2.25 per annum for switching rural service subscribers connected on "branch lines," and that these rates do not produce sufficient revenue to pay all necessary operating expenses. Application is made for authority to put into effect a rate of \$3.50 per annum for switching all rural service subscribers.

Hearing was held at Springfield, Illinois, October 6, 1914. *C. M. Whitney* and *Walter Wine* appeared for the petitioner. *Marion Young* and *A. D. Farr* appeared objecting.

It appeared from the testimony that the petitioner was serving, on October 1, 1914, 140 town subscribers and 256 rural service subscribers, and that all rural subscribers own their lines and telephones and are classed as rural service subscribers, and that in addition to furnishing such subscribers a switching service, this petitioner maintains the lines and telephones.

As evidence that the cost of switching these rural service subscribers is considerably in excess of the revenue derived from such subscribers under the present switching rates, and also that the proposed rate of \$3.50 per annum is in proportion to the cost of rendering the service, the petitioner submitted a statement of annual operating and maintenance expenses. According to this statement, the annual cost of operating and maintaining the central office equipment amounts to \$1,135, which, apportioned on the basis of 400 telephones connected, is \$2.84 per telephone per annum. The cost of maintaining the 21 country lines and 140 town lines amounts to \$900 annually, and accordingly, one-seventh of this amount, or \$128, is apportioned among the 256 country telephones, making the annual maintenance

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charges 50 cents per telephone. The total operating and maintenance expense chargeable to each rural service station, on this basis, is \$2.84 plus 50 cents, or \$3.34 per annum.

The items of expense set forth in the statement do not entirely agree with the information contained in other statements and reports filed by the petitioner with the Commission. The previous records of the utility were not kept in accordance with the uniform system of accounting prescribed by the Commission and it is not possible to verify each item of expense; but it appears from the manner in which the exchange of the petitioner has been operated, and taking into consideration average operating expenses at other exchanges of similar size and character, that the expenses as indicated by the statement are not unreasonable.

The apportionment of operating and maintenance expenses solely on a per station basis, however, does not take into consideration the fact that operating expenses in general vary in accordance with the volume and character of traffic handled. The petitioner was not prepared at the hearing to make a detailed showing in this regard and it was stipulated by the parties interested in the case that a "peg count" or traffic study should be made of the traffic handled through the Vermont switchboard, under the supervision of the experts of the Commission.

A "peg count," or traffic study of the traffic handled through the Vermont switchboard, was made for a three-day period and consists of an hourly record of all originating calls, with the exception of "no answer calls," "time calls," and miscellaneous inquiries from subscribers. These irregular calls constitute a negligible part of the total traffic, and consequently were ignored.

The results of the traffic study are indicated in the following tables:

TABLE A.
VERMONT TELEPHONE AND EXCHANGE COMPANY.
AVERAGE DAILY LOCAL CALLS.

Hours	Class of calls						Total rural and town	Restoring rural drops*
	Rural to rural	Rural to town	Total rural	Town to town	Town to rural	Total town		
A. M.								
12-1	.....	.....	.....	.....	.....	.....	.....	.....
1-2	.....	1	1	.....	.....	.....	1	.....
2-3	.....	.....	.....	.....	.....	.....	.....	.....
3-4	.....	.....	.....	.....	.....	.....	.....	.....
4-5	4	2	6	1	1	2	8	6
5-6	8	5	13	2	2	4	17	11
6-7	19	9	28	6	4	10	38	24
7-8	25	13	38	14	5	19	57	25
8-9	28	15	43	18	5	23	66	32
9-10	24	13	37	18	7	25	62	34
10-11	24	10	34	12	6	18	52	27
11-12	16	7	23	12	3	15	38	20
P. M.								
12-1	25	9	34	15	6	21	55	22
1-2	15	8	23	16	6	22	45	24
2-3	13	6	19	14	3	17	36	16
3-4	15	8	23	14	9	23	46	17
4-5	17	12	29	16	9	25	54	25
5-6	19	8	27	22	8	30	57	29
6-7	20	9	29	15	12	27	56	29
7-8	22	13	35	17	11	28	63	23
8-9	10	6	16	12	6	18	34	12
9-10	.....	.....	.....	.....	.....	.....	.....	.....
10-11	3	3	6	6	2	8	14	2
11-12	.....	.....	.....	.....	.....	.....	.....	.....
TOTAL..	307	157	464	230	105	335	799	379

* Indicates the number of times rural subscribers called on their own lines and, in doing so, signalled the operator.

TABLE B.
VERMONT TELEPHONE AND EXCHANGE COMPANY.
Traffic Data.

Number of subscribers served.....	414
Average number of calls handled per day*.....	1,178
Average daily calls per subscriber.....	2.85
<hr/>	
Number of town subscribers served.....	147
Average number of town calls handled per day.....	335
Average daily calls per town subscriber.....	2.28
<hr/>	
Number of rural subscribers served.....	267
Average number of rural calls handled per day*.....	843
Average daily calls per rural subscriber.....	3.16
<hr/>	
Ratio of average town calls to average total calls per day.....	28.4%
Ratio of average rural calls to average total calls per day....	71.6%
<hr/>	
Ratio of average number of rural drops restored to the average number of rural calls per day.....	45.0%
<hr/>	
Ratio of town subscribers to total subscribers.....	35.5%
Ratio of rural subscribers to total subscribers.....	64.5%

*Includes 379 rural drops restored.

“Table A” indicates the average number of messages handled per hour, classified as “rural to rural,” “rural to town,” “town to town,” “town to rural” and “restored rural drops.” The last named class of calls are those between rural subscribers connected on the same line. An intra-line call does not require the operator to connect the subscriber, but does require the operator to restore the shutter of the line drop and to otherwise supervise the call, so that approximately the same amount of attention is given to intra-line calls as to calls between subscribers on separate lines.

“Table B” is an analysis of “Table A” and shows the relation between the town and rural traffic and the number

of subscribers served. This relation, expressed mathematically, is the best indication of the amount of work, and consequently the amount of expense of operation properly chargeable to switching rural service subscribers.

At the time the traffic study was made, the petitioner was serving 147 town telephones and 267 rural telephones, which is 17 telephones in excess of the number reported in the petitioner's statement of expense. The slight difference in telephones, however, would not be likely to affect the total expense materially, and consequently, while it appears advisable to consider the number of telephones in service as determined by the traffic study, that does not preclude the acceptance of the petitioner's statement of operating and maintenance expenses as being approximately correct. The rural service subscribers originate approximately 72 per cent. of the total traffic handled, which, it appears, is not an abnormal proportion, considering that about 65 per cent. of the total subscribers are rural service subscribers and that the calling rate from these subscribers is 3.16 calls per subscriber per day, while the town calling rate is only 2.85 calls per subscriber per day. Also the trend of the rural calling rate in the month of April, when the traffic study was made, is usually upward because of farming activities at that season of the year.

Assuming that operating expenses amount to approximately \$1,135 annually, as indicated by the statement filed by the petitioner, on the basis of the traffic study, rural service subscribers should be charged with 72 per cent. of this amount, or \$818; and, assuming also that the expense of maintaining the subscribers' lines amounts to approximately \$900 per year, and that about one-seventh of these lines are rural, the rural service subscribers should be charged with about \$128 of the annual maintenance expense. The total annual expense, therefore, chargeable to rural service subscribers is \$946.

From the foregoing it appears that the present switching rates of \$2.00 per year for subscribers connected on rural service trunk lines, and \$2.25 per year for subscribers

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connected on rural service branch lines, are less than the actual cost of furnishing the service.

In view of the facts presented in this case, it appears that a rate of \$3.50 per year for switching rural service subscribers is justified, and that such rate will not produce any revenue in excess of the actual expenses of the petitioner properly chargeable to switching rural service subscribers and maintaining such subscribers' lines.

It is, therefore, ordered, That the petitioner, the Vermont Telephone and Exchange Company, be, and is hereby, authorized to put into effect a rate of \$3.50 per year for switching rural service subscribers.

It is further ordered, That such rate shall become effective as of July 1, 1915, and shall be filed, posted and published by said petitioner as provided by Section 34 of an act entitled "*An Act to Provide for the Regulation of Public Utilities.*"

By order of the Commission, this seventeenth day of June, 1915, dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF THE WINSLOW AND
SOUTH WAYNE TELEPHONE COMPANY FOR AUTHORITY TO
CHANGE RATES.

Case No. 3165.

Decided June 17, 1915.

**Increase in Individual Business Rates Authorized — Discontinuance of
Free Service Between Exchanges and Substitution of Message Rates
Authorized — Establishment of All Day Sunday Service Ordered.**

Applicant sought authority to increase its rate for individual business telephones at Winslow from \$1.50 to \$1.75, to discontinue certain free interexchange service and to substitute therefor toll charges. The increases sought were primarily for the purpose of securing sufficient revenue to enable the petitioner to furnish all day Sunday service at Winslow.

The Commission considered the operating expenses and revenues under the existing rates, the additional revenue to be obtained under the proposed rates, and also the fact that the present rates for both individual business and individual residence service were the same.

Held: That by increasing the present individual business rate the applicant would secure a more reasonable adjustment between its business and residence rates;

That in order to provide funds to maintain properly its toll circuits from Winslow to Warren, Stockton and Pearl City, a small toll should be charged in lieu of the free service at present rendered between Winslow and these points.

Ordered, That the applicant be authorized to increase its rate for individual business telephones at its Winslow exchange from \$1.50 to \$1.75 per month, and also to discontinue free service between Winslow and Warren, Stockton and Pearl City and substitute in lieu thereof toll rates;

That applicant be required to furnish all day Sunday service to all subscribers connected with its Winslow exchange.

OPINION AND ORDER.

The original application in this case sets forth that the petitioner is a public utility operating a telephone system, with its principal place of business at Winslow, Illinois. The application asked for authority to increase certain telephone rates.

A hearing was held before the Commission and testimony taken, but before an order was entered in the case, the petitioner asked for and obtained leave to amend his application. The amended application asked for authority to increase the rate for individual business telephones at Winslow from \$1.50 to \$1.75 per month; also to discontinue certain free toll service and to substitute therefor certain charges as follows:

From Winslow to Warren.....	10 cents
From Winslow to Stockton.....	15 cents
From Winslow to Pearl City.....	10 cents

A hearing was held on the amended application before the Commission in Chicago, Illinois, on May 11, 1915. *W. H. Phelps*, president, appeared on behalf of the petitioner. No one appeared objecting.

It appears from the evidence in this case that the petitioner owns and operates a telephone system with two local exchanges. One exchange is located at Winslow, Stephenson County, Illinois, and the other at South Wayne, LaFayette

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County, Wisconsin. In addition to the local service furnished the subscribers of its Winslow exchange, the petitioner has been furnishing free service to South Wayne, Wiotia and Gratiot in Wisconsin, and to Lena, McConnell, Pearl City, Warren and Stockton, Illinois.

The petitioner does not furnish all day Sunday service; the Winslow exchange being operated only two hours in the morning and two hours in the evening on Sunday. There appears to be a demand on the part of the Winslow subscribers for all day Sunday service. The 25 cents per month increase in the business rate at Winslow asked for by the petitioner, and the three toll rates sought to be established are primarily for the purpose of securing enough revenue to enable the petitioner to furnish all day Sunday service.

The record shows that the gross revenue of the company from all sources for the year ending December 31, 1914, was \$2,455, and that the expenses of operation were \$2,121, leaving only \$334 to cover the depreciation and return on the investment.

It is manifest that it is not necessary at this time to determine the value of the physical property of the company used in furnishing telephone service to its Winslow subscribers, in order to pass upon the application.

The present rate both individual residence and individual business telephones at Winslow is \$1.50 per month. In Conference Ruling No. 13,* and in other decisions, this Commission has ruled that it is reasonable and permissible to charge a higher rate for business than for residence telephones. Therefore, in this case, by increasing the present rate for individual business telephones to \$1.75 per month, the petitioner will secure a more reasonable adjustment between its business and residence rates. This increase will affect twelve business subscribers and will result in an increase of \$36.00 per year in the revenue of the company.

*See Commission Leaflet No. 34, p. 1008.

In regard to the toll rates which the petitioner desires to put into effect, the record shows from Winslow, Warren is twelve miles west, Stockton is twenty-four miles southwest and Pearl City is nineteen miles south; that the telephone companies with which the petitioner connects charge toll on messages originating on their lines at either of the three points last above mentioned and terminating at Winslow; that in order to provide funds with which to properly maintain the toll circuits between Winslow and the three points in question, a small toll charge is necessary. The estimated revenue that will be derived from such toll charges is \$190 per year.

It is, therefore, ordered, That the petitioner be, and it hereby is, granted authority to increase its present rate for individual business telephones at its Winslow, Illinois, exchange from \$1.50 to \$1.75 per month. Also to discontinue free telephone service between said Winslow exchange and Warren, Stockton and Pearl City, Illinois, and to put into effect toll rates between said points, as follows:

From Winslow to Warren.....	10 cents
From Winslow to Stockton.....	15 cents
From Winslow to Pearl City.....	10 cents

The above changes in rates shall be filed with this Commission and posted and published as provided by law. The rates herein authorized shall become effective on July 1, 1915.

It is further ordered, That the petitioner be, and it hereby is, required to furnish from and after July 1, 1915, all day Sunday telephone service to all subscribers connected with its Winslow, Illinois, exchange.

By order of the Commission, this seventeenth day of June, 1915, dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF WILLIAM B. ROSS,
DOING BUSINESS AS THE KINMUNDY MUTUAL TELEPHONE
EXCHANGE OF KINMUNDY, ILLINOIS, FOR AUTHORITY TO
CHANGE RATES.

Case No. 3225.

Decided June 17, 1915.

Increase in Switching Rates Authorized—Traffic Study Made.

Applicant sought authority to discontinue certain discriminatory rates and to increase certain other rates in order to produce sufficient revenue to cover the cost of operation and maintenance, including reserve for depreciation, and to pay a fair return on the capital invested.

The discriminatory features in the existing rates were the results of entering into separate and individual contracts with several groups of rural subscribers.

In considering the contention that the present revenues were insufficient to cover the cost of operation and maintenance, including reserve for depreciation, the Commission examined the operating expenses and revenues under the existing schedule. After adding \$80.00 per month for manager's salary and allowing 5 per cent. of the property value as reserve for depreciation, the Commission concluded that the utility under the old rates was earning little, if any, net return.

To determine the reasonableness of the proposed rates for switching rural service subscribers, a three-day traffic study was made of all originating calls, including "busy," "no answer" and time calls and miscellaneous inquiries, as this miscellaneous traffic required as much supervision and attention on the part of the operator as did regular calls.

A tabulation of the results showed that 47 per cent. of the traffic was rural, that city subscribers originated 39 per cent. of the calls, and that both rural and city subscribers in conjunction with subscribers of neighboring exchanges were chargeable with 14 per cent. of the traffic. As nearly 70 per cent. of the total development was rural, and as the rural calling rate at the time the traffic study was made was very liberal as a minimum, rural traffic was considered as constituting approximately 50 per cent. of the total traffic.

On a 50 per cent. basis rural traffic would be chargeable with one-half of the central office expense, or \$738, which, apportioned among 323 rural service subscribers, would be approximately \$2.30 per subscriber.

Held: That in view of the fact that 70 per cent. of the total development was rural, and that therefore a somewhat greater profit from switching service was justified than if the utility was serving a small number of rural service subscribers, a rate of \$3.00 per year for switching such subscribers was not unreasonable.

**Rural Switching Service to Subscribers Living Within Village Limits
Condemned.**

Certain subscribers who had formerly lived in the country but who had moved into the village, bringing their telephones with them and connecting with rural lines at points within the village, were receiving service at the rural switching rate.

Held: That if a telephone subscriber voluntarily takes himself out of the rural class and comes to reside in a city or village, and desires telephone service, he should pay the rate that applies to city or village subscribers for the class of service furnished;

That it is proper that the telephone company establish such rules as will tend to maintain the classifications of service and rates provided for city or village subscribers, and a rule restricting switching service to rural subscribers is a proper regulation.

**Establishment of Rate for Rural Business Telephones Denied — Estab-
lishment of Two Rates for Rural Switching Service Held Irregular.**

Held: That the proposed rate of \$1.25 per month for rural business telephones was not warranted and would probably result in discriminations as between subscribers on the same line, that if a considerable number of business subscribers in the country were to be served, a special rural business rate might be justified, but not otherwise;

That a rate of 25 cents per month for switching rural service subscribers being proper, there was no justification for a rate of 35 cents per month for four-party rural switching service, that subscribers on the so-called four-party rural service lines should pay for the minimum of six telephones.

Schedule of Rates as Modified Approved.

Eliminating the \$1.25 rural business rate, the proposed rates would yield a return of over 8.8 per cent. on the investment.

Held: That such a return would not be justified in this case;

That the rate for individual line business telephones should be increased to \$21.00 per year instead of \$24.00, as the net return would then be about 7.2 per cent.;

That the schedule as modified by the Commission should be approved.

OPINION AND ORDER.

Application in the above entitled matter sets forth that the petitioner is a public utility engaged in the management and operation of a telephone system in and around the village of Kinmundy, Marion County, Illinois, and that the rates or charges of the petitioner are discriminatory and unprofitable, in some instances being less than the cost

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of furnishing the service. Application is made for authority to discontinue such rates as are discriminatory and to increase certain other rates, in order to produce sufficient revenue to cover the cost of operation and maintenance, including depreciation, and pay a fair return on the capital invested.

The rates of the petitioner now in force and effect, as set forth in the application, are as follows:

Individual line business telephones.....	\$1 50 per month
Individual line residence telephones.....	1 00 per month
Extension telephones	50 per month
Four-party line telephones.....	75 per month
Three-party country line telephones.....	1 00 per month
Rural telephones on lines with farmers who own their own telephones	50 per month
One-party line to Alma, Illinois.....	1 00 per month
Business and residence telephones on same line.....	2 25 per month
Switching rural telephones — subscribers owning line beyond the city limits of Kinmundy and telephone instrument — 5 to 23 telephones on a line — each telephone	1 00 per year
Switching rural telephones — subscribers owning line beyond city limits of Kinmundy and telephone instrument — no more than 8 telephones on a line — each telephone	1 50 per year
Switching rural telephones — subscribers owning line beyond the city limits of Kinmundy and telephone instrument — no more than 3 telephones on a line — each telephone	2 00 per year
Switching rural telephones — subscribers owning line beyond the city limits of Kinmundy and telephone instrument — no more than 2 telephones on a line — each telephone	4 00 per year
Switching individual line rural telephones — subscriber owning line beyond the city limits of Kinmundy and telephone instrument	6 00 per year
Rural individual line telephones located just outside the city limits — company furnishing line and all equipment	12 00 per year
In instances where rural line is furnished by the company and the subscribers own the instruments, there is an added charge of.....	1 00 per year

Petitioner proposes to discontinue the schedule of rates now in force and effect and establish, in lieu thereof, the following schedule:

Business telephones	\$2 00 per month
Residence telephones	1 00 per month
Extension telephones	50 per month
Extension bells	25 per month
Party line business telephones in country.....	1 25 per month
Party line residence telephones in country.....	1 00 per month
Switching farmer lines, minimum 6 on a line.....	25 per month
Switching four-party line in country.....	35 per month
Private grounded line outside city, extra for each one-half mile or fraction thereof.....	25 per month

Hearing was held at Springfield, Illinois, February 3, 1915. The petitioner was represented by *Robert Fitzgerald*, attorney. No one appeared objecting.

From the testimony presented at the hearing, it appeared that William B. Ross, the present owner, purchased the Kinmundy telephone exchange in October, 1910, and that the plant and equipment have been extended and improved since coming into his possession, with a resultant improvement in the service.

It further appeared that the rural lines are various in kind and character; that the discriminatory rates or charges are the result of entering into separate and individual contracts with several groups of rural subscribers, and that the entire rate schedule should be revised so as to eliminate the discriminatory rates or charges.

In support of the petitioner's contention that the rates now in force and effect do not produce sufficient revenue to cover the cost of operation and maintenance, including depreciation, the petitioner filed a statement of plant investment, from which it appears that the present value of the physical property is about \$6,600, which, on the basis of 169 owned stations, is a value of about \$39.00 per station. This does not appear to be excessive, and, in view of the facts hereinafter set forth, the Commission does not consider a physical valuation of the property necessary at this time.

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The petitioner also submitted a statement of earnings and expenses, but this was of little value in determining the average annual expense and annual net revenue. In a sworn statement filed as supplementary evidence, the operating expenses for the thirteen months ending February 1, 1915, are given as \$2,978.22, but this statement was qualified by a memorandum which explained that \$1,768.22 had been spent for reconstruction and that the net addition to plant amounted to \$1,168.22. This would reduce the operating expenses to \$1,810, or for twelve months' period, to approximately \$1,670.

No amount is included in the foregoing expenses for manager's salary, and the petitioner contended that at least \$100 per month should be considered for this purpose. It appeared from the testimony, however, that the manager does not devote his entire time to the business of the utility, and in view of this, a monthly salary of \$80.00 should be a sufficient reimbursement.

Inasmuch as no amount has been set aside for depreciation, it appears proper that at least 5 per cent. of the property value should be deducted from the gross revenue for this purpose annually. At 5 per cent., the depreciation would amount to approximately \$330.

The annual gross operating expenses, therefore, including the manager's salary and a necessary depreciation charge, would amount to \$2,960. With an annual revenue of approximately \$2,737, it is safe to conclude that the utility is earning little, if any, net revenue at the present time, even though the statements submitted by the petitioner are somewhat conflicting.

In order to determine the reasonableness of the proposed rate for switching rural service subscribers, a traffic record or peg count was made of all calls handled by the petitioner through the Kinmundy exchange for a three days' period. The result of this traffic study are shown by the following statement:

KINMUNDY MUTUAL TELEPHONE EXCHANGE.

Traffic Data.

Average number of calls per day.....	978*
Average number of rural to rural calls per day (intra-line).....	391†
Average number of originating free switching calls per day.....	114
<hr/>	
Average number of all originating calls per day.....	1,483
Total number of all subscribers.....	483
Average number of daily originating calls per subscriber....	3.03
Total number of city subscribers.....	156
Average number of city originating calls per day.....	670
Average number of daily originating calls per city subscriber.....	4.29
Total number of rural subscribers.....	332
Average number of rural originating calls per day.....	813
Average number of daily originating calls per rural subscriber	2.45
Total number of all subscribers.....	488
Average number of originating toll calls per day.....	8
Average number of daily originating toll calls per subscriber.....	.0163
Average number of total calls handled per day.....	1,596‡
Average number of city calls handled per day.....	614
Ratio of daily city calls to daily total calls.....	38.5%
Average number of rural calls handled per day.....	755
Ratio of daily rural calls to daily total calls.....	47.3%
Average number of free switching calls handled per day....	211
Ratio of daily free switching calls to total calls.....	13.2%
Average number of toll calls handled per day.....	16
Ratio of daily toll calls to total calls.....	1.0%
Total number of all subscribers.....	488
Ratio of 156 city subscribers to total subscribers.....	32.0%
Ratio of 332 rural subscribers to total subscribers.....	68.0%
Ratio of 189 miscellaneous calls to 1,596 total calls.....	11.84%
Ratio of 391 average rural drops restored per day to 813 average rural calls per day.....	48.15%

*Includes 187 busy, no answer and time calls, and miscellaneous inquiries from subscribers.

†Indicated by the number of times rural drops were restored.

‡Includes all inward and outward local, free switching and toll calls.

In determining the daily calling rate per subscriber, the number of originating calls only were considered. All busy, no answer, time calls and miscellaneous inquiries from subscribers and intra-line rural calls were given the same consideration as completed calls, as previous traffic studies have indicated that this miscellaneous traffic requires as

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much supervision and attention on the part of the operator as do regular calls.

As indicated by the traffic study, the city calling rate is somewhat higher, and the rural calling rate somewhat lower, than would ordinarily be expected in an exchange of the same general character as Kinmundy. This may be due, in part, to the percentage of miscellaneous and free switching calls credited to the city traffic and to the fact that at the time the traffic study was made, spring activities in the rural districts had not yet begun. The average daily calling rate for the exchange as a whole, however, is about normal.

Nearly 1,600 calls are handled daily through the Kinmundy exchange; about 47 per cent. of this traffic is rural; city subscribers originate 39 per cent. of all the calls, and both rural and city subscribers, in conjunction with subscribers of neighboring exchanges, are charged with free switching to the extent of 14 per cent. of the total daily traffic.

The annual revenue now derived from city and rural subscribers under the schedule of rates or charges now in force and effect is indicated by the following table:

27	Individual line business telephones at \$18.00 per year..	\$486 00
9*	Combination business and residence telephones at \$27.00 per year.....	243 00
111	Residence telephones at \$12.00 per year.....	1,332 00
4	Business telephones (in Alma) at \$12.00 per year....	48 00
CITY REVENUE		\$2,109 00
5	Rural telephones at \$6.00 per year.....	30 00
98	Service telephones at \$2.00 per year.....	196 00
214	Service telephones at \$1.00 per year.....	214 00
8	Service telephones at \$1.50 per year.....	12 00
2	Service telephones at \$4.00 per year.....	8 00
1	Service telephone at \$6.00 per year.....	6 00
488	COUNTRY REVENUE.....	\$466 00
COUNTRY REVENUE		\$466 00
Toll revenue (estimated).....		162 00
Total annual revenue.....		\$2,737 00

*Represents 18 telephones.

According to the statement filed by the petitioner, central office operating expenses for thirteen months were:

Operators' salaries	\$700 00
Switchboard repairs	25 00
Office rent	65 00
Light, power and fuel.....	50 00
Insurance	30 00
<hr/>	
TOTAL	\$870 00
Or for the 12 months period.....	803 00

It appears that about 70 per cent. of the manager's salary is properly chargeable to central office operating expense, and assuming that the statement is approximately correct, and adding \$673, which is 70 per cent. of the amount allowed for manager's salary, the total annual central office operating expenses are \$1,476.

According to the traffic study, 47 per cent. of the total daily traffic is chargeable to the rural service subscribers. However, since nearly 70 per cent. of the total development is rural, and as the rural calling rate at the time the traffic study was made was very liberal as a minimum, it seems fair to consider the average rural traffic as constituting approximately 50 per cent. of the total traffic.

On a 50 per cent. basis, the rural traffic would be chargeable with 50 per cent. of the total central office expense, or \$738, which, apportioned among the 323 service subscribers, is approximately \$2.30 per subscriber. In view of the fact that 70 per cent. of the total development is rural, a somewhat greater profit from switching service is justified than if the utility was serving a small number of rural service subscribers, in which case the value of the connection would properly off-set any profit that might otherwise be derived from serving such subscribers. It appears, therefore, that in this case a rate of \$3.00 per year for switching rural service subscribers is not unreasonable.

It appears from the testimony, that the switching service is not confined to subscribers living in the country, but is extended to certain subscribers residing within the village

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of Kinmundy; that these subscribers formerly lived in the country and moved into the village, bringing their telephones with them and connecting with the rural lines at points within the village and receiving service at the rural switching rate.

The petitioner contended that this practice is undesirable and discriminatory; that all subscribers living within the village or exchange area should be on an equal basis, and that the rural service rate should not extend to any subscribers within the village.

Unquestionably the person who leaves the country to live in a city or village, and who enjoys the privileges of a resident of the city or village, should, as a matter of course, be subject to the same limitations and regulations that apply to all other persons similarly situated, and if a telephone subscriber voluntarily takes himself out of the rural class and comes to reside in the city or village, and desires telephone service, it would seem that he should pay the rate that applies to city or village subscribers for the class of service furnished.

Rural switching service is distinct from the various classes of local exchange service and is designated for persons living in the country who own and maintain their own lines and telephones. It is proper that the telephone company establish such rules as will tend to maintain the classifications of service and rates provided for city or village subscribers, and a rule restricting switching service to rural subscribers is a proper regulation.

The proposed rate of \$1.25 per month for rural business telephones is not warranted under the circumstances and would probably result in discriminations as between subscribers on the same line. If a considerable number of business subscribers in the country were to be served, a special rural business rate might be justified, but not otherwise. Likewise the establishment of two rates for switching rural service subscribers is irregular. The 25 cent rate being proper, there is no justification for the 35 cent rate, as the subscribers on a so-called "four-party" rural service line should pay for the minimum of six telephones.

Eliminating the \$1.25 rural business rate, the revenue that would be derived under the rates proposed by the petitioner is shown by the following table:

36 Individual line business telephones at \$24.00 per year..	\$864 00
129 Residence telephones at \$12.00 per year.....	1,548 00
323 Service telephones at \$3.00 per year.....	969 00
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488	\$3,381 00
Estimated toll revenue.....	162 00
<hr/>	
TOTAL ANNUAL REVENUE.....	\$3,543 00

The revenue on this basis would be slightly increased by rentals from extensions, extension bells and the excess revenue on rural lines with less than six telephones.

With a gross income of \$3,543 and operating expenses amounting to \$2,960, net revenue would be \$583. This represents a return of 8.8 per cent. on an investment of \$6,600, and it does not appear that any increase that would produce a net return of this amount would be justified in this case.

If the individual line business rate is increased to only \$21.00, the total annual revenue and net return on this basis would be \$475 or 7.2 per cent. on the total investment, as indicated by the following table:

36 Individual line business telephones at \$21.00 per year..	\$756 00
129 Residence telephones at \$12.00 per year.....	1,548 00
323 Service telephones at \$3.00 per year.....	969 00
<hr/>	
	\$3,273 00
Estimated toll revenue.....	162 00
<hr/>	
TOTAL ANNUAL REVENUE.....	\$3,435 00
TOTAL OPERATING EXPENSES.....	2,960 00
<hr/>	
NET REVENUE	\$475 00
NET RETURN ON \$6,600.....	7.2%

A differential of \$9.00 per year between the business and residence rates appears excessive, but a study of the conditions under which the petitioner is operating indicated

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that an increase in the residence rate is unwarranted at this time.

It is, therefore, ordered, That the petitioner, William B. Ross, doing business as the Kinmundy Mutual Telephone Exchange, discontinue the schedule of rates now in force and effect, as set forth in the application filed herein, and substitute, in lieu thereof, the following schedule:

Individual line business telephones.....	\$21 00 per year
Residence telephones	12 00 per year
Extension telephones	6 00 per year
Extension bells	3 00 per year
Switching each rural service telephone, with a minimum of 6 telephones per line.....	3 00 per year
Private grounded line outside city, each half mile or fraction thereof	3 00 per year

It is further ordered, That the schedule of rates herein authorized shall become effective as of July 1, 1915, and shall be filed, posted and published by said petitioner as provided by Section 34 of an Act entitled "*An Act to Provide for the Regulation of Public Utilities.*"

By order of the Commission, this seventeenth day of June, 1915, dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF THE JOHNSON COUNTY
MUTUAL TELEPHONE COMPANY OF VIENNA FOR A CER-
TIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO
INSTALL AND OPERATE A SWITCHBOARD AT CROSS ROADS,
JOHNSON COUNTY, ILLINOIS.

Case No. 3630.

Decided June 17, 1915.

**Certificate of Public Convenience and Necessity Authorizing Installation
and Operation of a Switchboard Refused.**

Petitioner sought a certificate that public convenience and necessity demanded the installation and operation of a switchboard at Cross Roads, a community which was being served by rural lines of the petitioner and of

certain competing companies. The Interior Telephone Company which was competing with the petitioner at Cross Roads and the Metropolis Telephone Company, with which the Interior Telephone Company was closely allied, entered their objections.

Petitioner maintained that it was impracticable to serve subscribers at Cross Roads by rural lines extending from its present exchange at Vienna, that the installation of a switchboard was necessary to relieve congestion on these lines and to allow the establishment of another physical connection between the lines of the petitioner and the Massac County Telephone Company, and that the service of the competing company at Cross Roads was inadequate.

The objectors contended that the conditions responsible for the unsatisfactory service over their lines at Cross Roads had been corrected, that Samoth, where the objector's exchange was located, was the logical center of the rural community of which Cross Roads was a part, and that public convenience was properly served through the exchange of the Metropolis company at Samoth.

Held: That public convenience and necessity do not require the installation and operation of a switchboard at Cross Roads;

That such demand for the service of the Johnson County Mutual Telephone Company as may exist in the rural community of which Cross Roads is the center should be met by the petitioner extending its existing rural lines and providing such additional rural lines from its Vienna exchange as may be required to serve such subscribers properly;

That public convenience and necessity do not require the establishment of a physical connection between the lines of the applicant and the lines of the Massac County company at a point near Samoth;

That the Metropolis Telephone Company should make such improvements to its property and such changes in operating conditions as may be required to serve adequately and efficiently the public demand for telephone service in the village of Samoth and the rural community of which it is the center.

OPINION AND ORDER.

The petitioner in this case is a corporation, organized under the laws of the State of Illinois, with its principal place of business at Vienna, Johnson County, and is engaged in the operation and management of a telephone system in Johnson County.

Petition sets forth that Cross Roads is located about eight miles southeast of Vienna; that the petitioner is now serving between fifty and seventy-five subscribers in the rural territory of which Cross Roads is the center; that the rural lines on which these subscribers are connected are over-

loaded and that it is necessary to install a switchboard at Cross Roads in order to relieve this condition and to improve the service.

Petition further sets forth that the only other telephone company doing business in the same territory is the Interior Telephone Company, of Vienna, which was recently acquired by the Murphysboro Telephone Company, and that in the rural territory of which Cross Roads is the center the Interior Telephone Company has not to exceed twenty subscribers.

Hearing was held before the Commission at Springfield, Illinois, April 20, 1915, *F. R. Woolfle* and *O. R. Morgan* appeared for the petitioner. *J. W. F. Smith*, manager of the Metropolis Telephone Company, of Metropolis, Illinois, representing the Metropolis Telephone Company and the Interior Telephone Company, appeared objecting.

It appeared from the testimony presented at the hearing, that the Johnson County Mutual Telephone Company and the Interior Telephone Company are operating in competition with each other throughout Johnson County; that the Johnson County company is closely allied with the Massac County Mutual Telephone Company, of Round Knob, which operates a telephone system in Massac County; that the Metropolis Telephone Company, with headquarters at Metropolis, also operates a general telephone system throughout Massac County and is closely allied with the Interior Telephone Company; that physical connection is established between the Johnson County company and the Massac County company, and between the Metropolis company and the Interior company, and that the Massac County company also maintains a physical connection with the Metropolis company at Metropolis.

It further appeared that the Metropolis company operates an exchange at Samoth, a village in the northwest part of Massac County; that the Cross Roads is about three miles northwest of Samoth; that many of the subscribers in the vicinity of Cross Roads now connected with the Johnson County company were formerly served by the Metrop-

olis company, through the Samoth exchange, and that other subscribers of the Metropolis company are seeking the service of the Johnson County company; that the Johnson County company has a pole line extending from Vienna to Samoth, via Cross Roads; that this line now carries three grounded circuits, serving seventy-five rural subscribers, and that a number of persons living in the vicinities of Cross Roads and Samoth have built rural telephone lines for the purpose of serving their own convenience and that such lines are to be connected with the switchboard to be installed at Cross Roads.

The petitioner contended that the service furnished by the Metropolis company through its exchange at Samoth is inadequate; that there has been much dissatisfaction among the subscribers, due to poor operating and inattention on the part of the operators, which condition is responsible for subscribers of the Metropolis company seeking the service of the Johnson County company; that by reason of the increase in the number of its subscribers in the vicinities of Cross Roads and Samoth, it is impracticable to serve subscribers on rural lines extending from the Vienna exchange; that the installation of a switchboard at Cross Roads will relieve the congested condition of the rural lines and admit of establishing another physical connection with the Massac County company; and that public convenience and necessity require and demand the installation of such switchboard and the establishment of such physical connection.

The objectors contended that the conditions responsible for the unsatisfactory service through the Samoth exchange have been corrected; that the subscribers are now generally satisfied with the service; that the village of Samoth is the logical center of the rural community of which the people living in the vicinity of Cross Roads are a part; that public convenience is properly served through the operation of the exchange of the Metropolis company at Samoth and that public necessity does not require the installation of a switchboard at Cross Roads.

No testimony was presented in support of the contention of the petitioner that it is impracticable to serve all of its subscribers in the vicinities of Cross Roads and Samoth by extending additional lines from its Vienna exchange, and in the absence of any witnesses who might testify to this and to the public necessity and demand for the installation of a switchboard at Cross Roads, it was stipulated and agreed by and between the parties hereto, that further testimony, to be considered as a part of the record in this case, be taken before a notary public or justice of the peace at Samoth within two weeks from April 20, 1915.

Further testimony was taken at Samoth on April 30, 1915, and filed with this Commission May 3, 1915.

The Commission having considered the evidence and the arguments submitted by the petitioner and by the objectors in this case, and being fully advised in the premises, finds:

That public convenience and necessity do not require and demand the installation and operation of a switchboard at Cross Roads;

That such demand as may exist in the rural community of which Cross Roads is the center for the service of the Johnson County Mutual Telephone Company should be met by the petitioner extending its existing rural lines and providing such additional rural lines, in connection with its Vienna exchange, as may be required to properly serve such subscribers;

That public convenience and necessity do not require and demand the establishment of a physical connection between the lines of the Johnson County Mutual Telephone Company and the Massac County Mutual Telephone Company at a point near Samoth or New Columbia, as proposed;

That the Metropolis Telephone Company should make such improvements to its physical property in the village of Samoth and such changes in operating conditions as may be required to adequately and efficiently serve the public demand for telephone service in the village and the rural community of which it is the center.

It is, therefore, ordered, That the petition of the Johnson County Mutual Telephone Company for a certificate of convenience and necessity to install and operate a switchboard at Cross Roads, Johnson County, Illinois, be, and the same is, hereby denied.

By order of the Commission, this seventeenth day of June, 1915, dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF GEORGE H. VERMILION, DOING BUSINESS AS THE LONDON MILLS TELEPHONE EXCHANGE, FOR AUTHORITY TO CHANGE RATES.

Case No. 3668.

Decided June 17, 1915.

Rural Switching Service Rates to Subscribers Owning Telephones and Lines but Located Within Exchange Limits Condemned.

Applicant sought authority to discontinue the switching service rates which it was charging in some cases for service within the exchange limits of London Mills, and to charge in lieu thereof the regular schedule rates.

Certain subscribers who lived within the village of London Mills owned and maintained their lines of telephones and were receiving service at the rural service rate. This condition tended to cause other subscribers to install their own telephones and build their own lines, and the result was a divided ownership of exchange lines and equipment. Some of the subscribers who were thus given service at rural service rates, although residing within the exchange limits, had formerly lived in the country and had moved to the village, bringing their telephones with them and connecting them either with rural lines at points within the village or directly with the lines of the petitioner.

Held: If a telephone subscriber voluntarily takes himself out of the rural class and goes to reside in the city or village and desires telephone service, he should pay the rate that applies to city or village subscribers for the class of service furnished;

That it is proper for the telephone company to establish such rules as will tend to maintain the classifications and rates provided for city or village subscribers, and a rule restricting switching service to rural subscribers only is a proper regulation;

That divided ownership of telephone lines and equipment is one of the most serious causes of unsatisfactory service and does not meet with the approval of the Commission, although through necessity persons in rural

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communities are permitted to build rural lines for their own convenience and connect with the exchange of the telephone utility;

That all subscribers within the exchange limits should pay the regular schedule rates for the class of service furnished, regardless of ownership of stock in rural telephone companies whose lines are connected with the utility or of the ownership of instruments and lines;

That the telephone company may rent equipment from subscribers and pay a reasonable rental therefor.

OPINION AND ORDER.

The petition in the above entitled matter sets forth that the petitioner has in effect a rate of \$3.00 per year for switching rural service subscribers; that such rate is applied to all rural subscribers who own and maintain their lines and telephones, connecting with the exchange of the petitioner at the corporate limits of the village of London Mills or some other designated point; that certain residents of the village of London Mills, who are stockholders in the companies or members of the associations owning the rural lines, insist that they have the right to install telephones in their residences or places of business in London Mills, connecting the same with the switchboard of the London Mills Telephone Exchange, and that the rural switching service rate should apply to such subscribers.

The petition further sets forth that there are now in the village of London Mills twenty-five or more persons who have installed and so connected their own telephones, receiving service at the rate of \$3.00 per year; that the rural switching service rate is designated to apply only to subscribers living outside the village limits of London Mills, or the exchange limits of the London Mills Telephone Exchange, and that subscribers living within the village or exchange limits are not entitled to enjoy such rural switching service rate; that the regular schedule rate for the class of service furnished should apply to all subscribers in the village of London Mills, and that for the utility to furnish service to certain or any subscribers so situated at any other or different rate is discriminatory and unlawful.

Application is made for authority to discontinue the switching service rate that now applies to subscribers who live within the village of London Mills, or the exchange limits of the London Mills Telephone Exchange, and charge in lieu thereof the regular schedule rates.

A hearing in this cause was held at Springfield, Illinois, May 19, 1915. *George H. Vermillion*, owner of the London Mills Telephone Exchange, appeared in his own behalf. No one appeared objecting.

The testimony presented at the hearing substantiated the statements set forth in the petition, and it further appeared from the testimony that there is considerable dissatisfaction among the subscribers of the London Mills Telephone Exchange by reason of the subscribers in the village of London Mills who own and maintain their lines and telephones receiving service at the rural switching service rate; that there is a tendency on the part of other subscribers to install their own telephones and build their lines, and that such practice will result in the divided ownership of the exchange lines and equipment and seriously impair the service.

The rate that should apply to a person who lives in a city or village and has a telephone in his residence or place of business, connected with a rural line in which he is a stockholder, such rural line being connected to the switchboard of the telephone utility operating in such city or village, and the right of a person who is a stockholder or a member of a company or association operating and maintaining rural lines that are connected with a telephone utility on a switching service basis, to install a telephone in his residence or place of business and receive service at the same rate that applies to subscribers connected directly to such rural lines, are questions that have been presented to the Commission in a number of informal cases and are formally presented as the issues in this case.

It appeared from the testimony that some of the subscribers living in the village of London Mills and receiving service at the rural switching service rate formerly lived

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in the country and moved into the village, bringing their telephones with them, and connecting either with rural lines at points within the village or directly with the lines of the petitioner. The person who leaves the country to live in a city or village and who enjoys the privileges of a resident of the city or village, should, as a matter of course, be subject to the limitations and regulations that apply to all other persons similarly situated, and if a telephone subscriber voluntarily takes himself out of the rural class and goes to reside in the city or village and desires telephone service, should pay the rate that applies to city or village subscribers for the class of service furnished.

Rural switching service is distinct from the various classes of local exchange service and is designated for persons living in the country who own and maintain their lines and telephones. It is proper that the telephone company should establish such rules as will tend to maintain the classifications and rates provided for city or village subscribers, and a rule restricting switching service to rural subscribers only is a proper regulation.

Divided ownership of telephone lines and equipment undoubtedly is one of the most serious causes of unsatisfactory service and does not meet with the approval of the Commission. There are many instances, however, where persons in rural communities have, through necessity, organized companies or associations and built rural telephone lines for the purpose of serving their own convenience, connecting such lines with the exchange of a telephone utility. The rural lines and the telephones connected thereto are generally recognized as an integral part of the utility, and such lines constitute a valuable asset not only to the utility but to the subscribers served, as in many instances rural communities served by such lines are thinly settled and do not warrant development by a telephone utility. Such subscribers are recognized as rural service subscribers and the rate for this service is usually classed as a switching charge for "rural service" subscribers.

The rates for service in the village of London Mills are:

Business telephones	\$13 00 per year
Residence telephones	10 00 per year

All subscribers located within the village or the exchange limits of the London Mills Telephone Exchange should pay the regular schedule rate for the class of service furnished, regardless of the ownership of stock in rural telephone companies whose lines are connected with the utility, or the ownership of instruments and lines. Conference Ruling No. 15* fixes the terms under which a telephone company may rent a telephone from the subscribers who own the same.

It is, therefore, ordered, That the petitioner, George H. Vermillion, doing business as the London Mills Telephone Exchange, shall discontinue furnishing service to subscribers located in the village of London Mills at the rural switching service rate and charge all subscribers the regular schedule rate for the class of service furnished, such change in rates to become effective as of July 1, 1915.

By order of the Commission, this seventeenth day of June, 1915, dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF THE JASPER COUNTY
MUTUAL TELEPHONE COMPANY FOR AUTHORITY TO CON-
SOLIDATE ITS EXCHANGE AT HUNT, ILLINOIS, WITH ITS
EXCHANGE AT WILLOW HILL, ILLINOIS.

Case No. 3691.

Decided June 17, 1915.

Consolidation of Exchanges Authorized — Improvement of Plant Prior to Consolidation Ordered.

OPINION AND ORDER.

The petition in the above entitled matter sets forth that the Jasper County Mutual Telephone Company is a cor-

*See Commission Leaflet No. 37, p. 457.

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poration engaged in the management and operation of a telephone system in Jasper County, Illinois, with its principal place of business at Newton; that it operates exchanges in the villages of Hunt and Willow Hill, which are about four miles apart; that the Hunt exchange serves a total of 139 subscribers connected on 11 party lines, and the Willow Hill exchange serves a total of 144 subscribers, connected on 16 party lines; that by reason of the small development it is not possible to maintain and operate the two exchanges at a high standard of efficiency and that the service rendered is necessarily inadequate and unsatisfactory to the subscribers.

The petitioner proposes to abandon the exchange at Hunt and serve the subscribers in and around the village of Hunt through the Willow Hill exchange and seeks the consent and approval of the Commission to the consolidation of the two exchanges.

A hearing was held at Springfield, Illinois, May 5, 1915. *G. P. Ireland*, president of the Jasper County Mutual Telephone Company, appeared for the petitioner. No one appeared objecting.

From the testimony presented at the hearing, it appeared that the switchboards installed at Hunt and Willow Hill are in poor condition; that in order to insure good service to the subscribers it will be necessary to install new equipment at both exchanges, which will require a considerable outlay on the part of the company and involve a continuous expense in the maintenance of the exchanges entirely out of proportion to the income from either, and that very little revenue is derived from the operation of the Hunt exchange by reason of its location and the conditions under which it is operated.

The villages of Hunt and Willow Hill have populations of approximately 350 and 450, respectively, and it appeared from the testimony that only a small number of the subscribers connected with the Hunt exchange are located within the village, the larger part of the development being

in the rural districts; that the distance between the two exchange centers is about four miles and that it is practicable, and will be more economical, to serve all of the subscribers now connected with the two exchanges from the one exchange center at Willow Hill.

It further appeared that the petitioner intends to install new central office equipment in the village of Willow Hill and thoroughly overhaul and repair the outside plant both within the village and in the rural districts, and that such improvements will be made at the time of the consolidation of the two exchanges.

On May 26, 1915, there was filed with the Commission a petition signed by 31 stockholders and subscribers of the Jasper County Mutual Telephone Company, protesting against the proposed consolidation of the two exchanges and the abandonment of the exchange in the village of Hunt. The petition merely sets forth that it is necessary to maintain and operate the switchboard in the village of Hunt in order to furnish good service to the subscribers now connected therewith.

The petitioner stated at the hearing that there was some opposition to the proposed consolidation of the two exchanges on the part of some of the subscribers connected with the Hunt exchange, and that this was due, largely, to local pride on the part of the citizens of the village rather than to any question as to the practicability and economy of serving subscribers in the two villages from one exchange center, and this seems to be borne out by the petition filed by the objectors. No showing was made by such objectors that the consolidation of the two exchanges will result in any impairment to the service furnished subscribers in the village of Hunt.

The Commission having considered the testimony and the supplemental proof and argument submitted by the petitioner, and the petition of the objectors filed herein, and being fully advised in the premises, finds that the prayer of the petition should be granted.

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It is, therefore, ordered, That the petitioner, Jasper County Mutual Telephone Company, be, and the same is hereby, authorized to discontinue the exchange that it now operates in the village of Hunt and consolidate such exchange with the exchange that it now operates in the village of Willow Hill.

It is further ordered, That prior to the consolidation of the two exchanges the petitioner shall make such improvements and repairs to its exchange plant in the village of Willow Hill and the rural lines connected therewith, including the lines in and around the village of Hunt, as may be necessary to furnish adequate and efficient service to the subscribers now connected and to be connected with the Willow Hill exchange.

By order of the Commission, this seventeenth day of June, 1915, dated at Springfield, Illinois.

INDIANA.

Public Service Commission.

TIPTON TELEPHONE COMPANY v. CITY OF TIPTON.

No. 1284.

Decided April 23, 1915.

Issue of Bonds to Finance Necessary Improvements Authorized.

Ordered, That the Tipton Telephone Company be authorized to issue \$20,000 of bonds, the proceeds or so much thereof as may be necessary, to be applied to equip its plant with the necessary facilities to provide a modern telephone system for said city that will provide adequate and satisfactory service, by installing a new switchboard, converting its grounded lines into metallic circuits, and providing telephone equipment of approved modern construction.

Commission Without Jurisdiction to Declare Contract Null and Void.

The Tipton Telephone Company and the city of Tipton had made an agreement that the Tipton Telephone Company would not raise its rates if the city would not permit a competing company to be established within said city.

Held: That even if the city of Tipton had no authority in law to enter into the contract above referred to, and the common council of the city could not bind the municipality by the agreement made, but on the contrary, could at any subsequent date have legally granted a franchise to a competing company, nevertheless it is not within the province of the Commission to declare the contract null and void.

Effect of Contract Between Utility and City upon Commission's Jurisdiction to Regulate Rates Considered.

Held: That the Commission is not invested with the power to regulate the rates and service of a public utility where a valid contractual rate has been established between the utility and the municipality, but that despite the agreement between the telephone company and the city in this case, the Commission may regulate the rates of the telephone company when proper application has been made for that purpose, or upon the Commission's own initiative.

OPINION AND ORDER.

Comes now the petitioner, Tipton Telephone Company, of Tipton, Indiana, and files its petition showing that it is operating a telephone plant in the city of Tipton, Indiana, under a franchise granted to the American Telephone Company of Kokomo, Indiana, in the year 1894; that in the year 1895 said American Telephone Company assigned its said franchise to said Tipton Telephone Company, and that subsequently in the year 1898 said Tipton Telephone Company and the city of Tipton, Indiana, entered into an agreement in terms as follows:

"This agreement made and entered into by and between the Tipton Telephone Company and the city of Tipton, Indiana,

WITNESSETH: That in consideration the said city of Tipton does not grant a right, lease, or franchise to erect, put in, and maintain a system of telephone in the city of Tipton to come in competition with the said telephone company, it is hereby agreed by the said Tipton Telephone Company that it will not increase its price over or higher than its present rates. It is further agreed and understood that this agreement is to be valid and binding on the parties hereto during the life of the franchise granted to the said Tipton Telephone Company by said city of Tipton unless said city of Tipton, should permit a competing telephone system to be put in the said city of Tipton, and in case the said city of Tipton does grant an ordinance, right, or lease to any person, company or corporation to put in a competing system of telephone in said city of Tipton, then this agreement is to be null and void and in no wise binding on said Tipton Telephone Company."

It is further alleged that at the time said contract was entered into the petitioner was maintaining a telephone system operated from a switchboard known as the "Sterling Magneto Board," and is still operating same pursuant to said contract; and that the rates then in effect and ever since are \$2.00 per month for business 'phones and \$1.00 per month for residence 'phones; that at the time of the execution of said contract the petitioner company did not have to exceed 400 'phones in use in said city; that said city has increased materially in population and that said telephone company has increased its 'phones in service to 1,040, and furnishes exchange service for the Sandbank

Telephone Company, which has 90 subscribers; that said petitioner company is desirous of constructing a modern telephone system of the latest and improved type, whereby it can give the citizens of said city and the patrons of said company better telephone service; that in order to make such improvements and provide such improved service it will be necessary to increase the rates now in effect for telephone service in said city.

Petitioner further shows that the Tipton telephone plant is now of a reasonable value of \$75,000, and that to make the necessary improvements to modernize said plant would necessitate an expenditure of about \$20,000, and prays an order that the Public Service Commission of Indiana annul said contract and grant an order authorizing said company to borrow \$20,000.

By direction of the Commission, notice of the pendency of the petition and hearing was published four weeks successively in the Tipton Times and Tipton Tribune, newspapers of general circulation and published in the city of Tipton, the first of which publications was made on the second of February and the last on the twenty-third of February, 1915; the hearing being held at the rooms of the Commission on February 25, 1915.

Upon the hearing the following facts were shown:

The company operates with a Sterling Electric Magneto Board, has no multiple and for that reason service is slow; the larger per cent. of the lines is grounded; that the pole lines are in fair condition; that 18,500 feet of cable, from 25 to 300 pair, are in use, and about 2,500 feet are underground; that additional underground construction is in contemplation, costing about \$2,000; that the class of service rendered is slow and in many instances unsatisfactory, and a demand for improved service exists in said city; that the service now rendered is as good as can be rendered with the present facilities; that the average operator on the present board can answer about 150 calls per hour, with a modern board 400 calls per hour can be answered; that there are

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other inconveniences with reference to the service; that in modernizing the plant all of the inside facilities would have to be replaced, and the change would cost about \$25.00 per line, dependent upon the equipment used; that the company is capitalized at \$75,000, with only \$50,000 issued; that during the first fourteen years of operation no dividends were declared, but the surplus was turned back into the plant; that during the past six or seven years dividends have been issued, running from 6 to 15 per cent.; that the original capital was \$10,000, additional sums were added thereafter and surplus revenues were turned into the plant; that the company owns a lot and building costing \$6,345, which has been paid out of the revenues and the company has an indebtedness of \$1,500; that the subject of better telephone service in the city of Tipton has been given consideration by the chamber of commerce through appropriate committee, and said committee made the following report:

To the Chamber of Commerce of Tipton County, Indiana:

We, the undersigned, your committee on telephones and telephone service, beg to submit the following report, to wit:

That the Tipton Telephone Company is preparing to build and equip a new switchboard of the very latest and best kind, that they are going to install instantaneous ringing telephones of the very best type, and that they are extending their cable lines, and making other valuable and lasting improvements at an expense of about \$35,000; that the Tipton Telephone Company has used its best efforts to co-operate with this committee that a telephone system may be obtained for Tipton and vicinity of the very best.

That in order to bring the service of said company to the standard desired by this committee, and in order for said company to earn a reasonable profit on the amount of money said company will have invested in said plant, it will be necessary to make new rates for said company.

That said company, through its officials, have met with this committee and have fully discussed the question of what would be reasonable charges, and, after a full discussion of the matter, the following rates have been decided upon, subject to the approval of the Public Service Commission of Indiana, to wit:

1. \$1.25 per month for eight-party rural service.
2. 1.25 per month for four-party harmonic city service.
3. 1.50 per month for two-party harmonic city service.
4. 1.75 per month for one-party metallic city service.
5. 2.50 per month for two-party metallic business service.
6. 3.00 per month for one-party metallic business service.
7. .75 per month for extension residence 'phones.
8. 1.50 per month for extension business 'phones.
9. .10 per call of three minutes in Tipton County where the message passes beyond the lines of the Tipton Telephone Company and terminating on an exchange in Tipton County, Indiana.

Said committee further shows that said Tipton Telephone Company is willing to assist this chamber of commerce to establish a free county right, that is, the right of any telephone subscriber in Tipton County to talk to any other subscriber in Tipton County, free of charge. That in doing this it makes about three thousand telephones available to subscribers. That if said county service is established, the above rates to residence telephones will be advanced 25 cents per month, and the rates to business 'phones will be advanced 50 cents per month.

That this committee recommends that these rates are fair and reasonable, and that they be approved by this chamber of commerce, and that said approval be reduced to writing and a copy thereof placed in the hands of the Public Service Commission of Indiana.

Respectfully submitted,

(Signed) S. G. YOUNG,

COMMITTEE ON TELEPHONES OF THE
CHAMBER OF COMMERCE OF TIPTON
COUNTY, INDIANA.

It was shown that when fires occur in the city of Tipton the alarm is sent by 'phone to the fire department and the water-works plant, and that by reason of the inefficiency of the 'phone service these alarms are not delivered with reasonable despatch.

There was some other evidence introduced in the case but not of a material nature.

It is contended by the petitioner that the contract of 1898 is not of binding effect, for the reason that the city had no authority to grant the petitioner a monopoly under any existing law of the State at the time that the contract was entered into.

Citizens' Natural Gas & Mining Company v. Elwood,
114 Ind. 332, 16 N. E. 624.

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The Commission concedes that the city of Tipton had no authority in law to enter into the contract referred to in the petition; that in fact the common council of the city could not bind the municipality by the agreement made, but on the contrary could at any subsequent date have legally granted a franchise to a competitive company. It is not, however, within the province of the Commission to declare the contract null and void. The Commission is not invested with the power to regulate the rates and service of a public utility where a valid contractual rate has been established between the utility and the municipality.

We are of the opinion that the rates of the petitioner company are subject to regulation by the Public Service Commission of Indiana, when proper application has been made for that purpose or upon the initiative of the Commission itself.

It is apparent from the undisputed testimony in this case that there is a just demand for better telephone service in the city of Tipton; and it is also apparent that it will require to provide adequate service an expenditure of not less than \$20,000.

The Commission, being advised in the premises —

It is, therefore, ordered, That the Tipton Telephone Company is hereby authorized to sell its bonds in the sum of \$20,000 in denominations of \$500 each, bearing 6 per cent. interest, payable semi-annually, at not less than par value thereof; said bonds to mature in not more than ten years from the date of issuance thereof.

It is further ordered, That said telephone company shall expend so much of said sum as shall be necessary to equip its plant with the necessary facilities to provide a modern telephone system for said city that will provide adequate and satisfactory service, by installing a new switchboard, and converting its grounded lines into metallic circuits, and providing telephone equipment of approved modern construction. And

It is further ordered, That said company shall report to the Commission its itemized expenditure of said sum of \$20,000, or any portion thereof.

It is further ordered, That said company pay to the State of Indiana the sum of \$30.00, as its fee for the authorization of its issue of \$20,000 of bonds.

Dated April 23, 1915.

IN THE MATTER OF THE APPLICATION OF THE PITTSBORO HOME
TELEPHONE COMPANY FOR AUTHORITY TO CHANGE RATES.

No. 1362.

Decided May 3, 1915.

Discrimination in Favor of Stockholders Eliminated.

ORDER.

On March 9, 1915, the Pittsboro Home Telephone Company, a corporation organized under the laws of the State of Indiana, filed an application with the Public Service Commission asking for authority to increase its schedule of rates, tolls and charges now filed with the Commission. The petition set out that the rate, toll and charge in force January 1, 1913, was as follows: 33 $\frac{1}{3}$ cents per month for stockholders and \$1.00 per month for users of telephone service other than stockholders. The petition further states that said rates are discriminatory, and prays permission to fix a rate of \$1.00 per month for both stockholders and non-stockholders.

A hearing was held before the Commission in this cause April 9, 1915, and the telephone company and the stockholders were represented.

The evidence showed that a meeting of the stockholders had been held prior to the filing of the above petition, and this action had the sanction of that meeting.

The Utility Commission Act, Section 112, provides as follows:

"If any public utility, or any agent or officer thereof, or any officer of any municipality constituting a public utility as defined in this Act, shall directly or indirectly by any device whatsoever, charge, demand, collect, or

receive from any person, firm, or corporation a greater or less compensation for any service rendered or to be rendered, or for any service in connection therewith, than that prescribed in the published schedules or tariffs then in force or established as provided herein, or than it charges, demands, collects, or receives from any other person, firm or corporation for a like contemporaneous service, such public utility shall be deemed guilty of unjust discrimination which is hereby prohibited and declared to be unlawful," etc.

Under this section, the practice of charging stockholders different rates than are charged to other users of the telephone service is clearly illegal.

It is, therefore, ordered, That the rate of \$1.00 per month for all users of the service of the Pittsboro Telephone Company be, and is hereby, approved, and that the discrimination in favor of stockholders be discontinued.

Dated May 3, 1915.

THE FARMERS MUTUAL TELEPHONE COMPANY v. CENTRAL
UNION TELEPHONE COMPANY.

No. 1330.

Decided June 2, 1915.

**Physical Connection for Toll Service Ordered, Although Toll Company
Already Connected with Another Local Company Serving Same
Territory as Petitioner.**

Plaintiff sought the establishment of a physical connection between its lines and those of the Central Union Telephone Company at Columbia City.

The defendant had three circuits extending from Fort Wayne to or through Columbia City, where one of these circuits was connected with the Whitley Telephone Company, which operated in the same locality as did the petitioner.

Held: That public convenience and necessity require the establishment of a physical connection for toll service between the lines of the defendant and those of the petitioner.

That such use of the lines of the defendant by the petitioner will not result in irreparable injury to the defendant or other users of the defendant's equipment nor any substantial detriment to the service to be rendered by the defendant or other users of its equipment.

Ordered: That physical connection for toll service be established between the lines of the defendant and the petitioner at Columbia City, that the cost of making said connection be borne by the petitioner, that compensation for the use of the defendant's lines will be fixed by the Commission if the parties are unable to agree.

OPINION AND ORDER.

The plaintiff in the above entitled cause files its petition alleging that it is a corporation organized under the laws of the State of Indiana for the building, operating and maintaining of telephone lines and telephone exchanges in the counties of Whitley, Noble, DeKalb, Allen, Huntington, Wabash, and Kosciusko in this State, that its principal office is at Columbia City, Indiana.

That it was organized in September, 1903, and it now has in use 1,790 telephones in Whitley County of said State; that said company has expended in the construction of its plant the sum of \$100,000 and has in use 1,400 miles of telephone lines;

That said company has connection with the towns of Churubusco, South Whitley, Peabody, Raber, Laud, Larwill, and Etna in said county, and said company has direct connection outside said county with Albion, Cromwell, Leesburg, North Manchester, Roanoke, Bippus, and with Warsaw through North Webster, and with Fort Wayne through Churubusco, over lines partly maintained and operated by said company, and connection with many other towns and cities in Indiana, and other states through the exchanges of other companies;

That the defendant, the Central Union Telephone Company, is the owner of three circuits in said county of Whitley that pass through Columbia City, one from Fort Wayne to Columbia City, which is connected with the Whitley County Telephone Company, and two from Fort Wayne to Warsaw, which are not connected with the Whitley Telephone Company;

That it would be of advantage and profit to the public if one of the lines of said defendant company was connected at Columbia City with the lines of petitioner's com-

pany; that it would be of great advantage and profit to said defendant company; that said lines of the said defendant company are through lines and connect with many cities and towns in the State of Indiana and other states, and prays an order of the Commission for toll line connection of said telephone companies at Columbia City.

Said Central Union Telephone Company by its Receivers answers, admitting that the petitioner company is organized under the laws of the State of Indiana, and engaged in building and operating telephone lines and exchanges at certain points in said State.

That the Central Union Telephone Company is the owner of circuits in Whitley County and has connections as stated in the petition; that it does not have accurate information as to whether public convenience and necessity require physical connection between the lines of the petitioner and defendant companies, as prayed for in the petition.

That the defendant company has connection with another telephone company operating in the same vicinity where petitioner's lines are located, and prays that an investigation be made as to whether public convenience and necessity require the physical connection asked by the petitioner, and as to whether there will result irreparable injury to the other users of the facilities of the respondent company.

The Commission having heard the evidence in the above entitled cause, and being well advised in the premises, finds that public convenience and necessity require that there be a physical connection made between the lines of the petitioner company and of the defendant, the Central Union Telephone Company, for the purpose of transmitting and receiving long distance messages; that such use of the lines of the defendant company by the petitioner company will not result in irreparable injury to the defendant company or other users of such defendant company's equipment, nor any substantial detriment to the service to be rendered, by said owner or other users of its equipment.

It is, therefore, ordered, That the Central Union Company by its Receivers make physical connection at the city of Columbia City, Indiana, between its lines and the lines of the Farmers Mutual Telephone Company whereby said Farmers Mutual Telephone Company can receive and transmit for its subscribers and patrons long distance messages to points within the State of Indiana.

It is further ordered, That the cost of making said physical connection shall be borne by the Farmers Mutual Telephone Company.

It is further ordered, With reference to the compensation for the use of said defendant company's lines, for the purpose herein stated, that the same will be fixed by the Commission in the event that said plaintiff and defendant companies fail to agree upon compensation for such service.

It is further ordered, That said physical connection, for the purpose herein stated, shall be made by the defendant company herein on or before the fifteenth day of June, 1915.

June 2, 1915.

IN THE MATTER OF THE APPLICATION OF AMERICAN TELEPHONE AND TELEGRAPH COMPANY OF INDIANA FOR DECLARATION OF CONVENIENCE AND NECESSITY TO TRANSACT BUSINESS IN THE CITY OF EAST CHICAGO, INDIANA.

No. 1436.

Decided June 4, 1915.

Public Convenience and Necessity Held to Justify Municipality in Authorizing Long Distance Company to Install and Operate Its Through Lines in the Conduits of Local Company.

ORDER.

Comes now the American Telephone and Telegraph Company of Indiana, and shows that it is a corporation duly organized and existing under and by virtue of the laws

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of the State of Indiana; that it conducts a telephone and telegraph business in the State of Indiana, with its principal office and place of business in the city of Indianapolis, Indiana.

That said American Telephone and Telegraph Company of Indiana is asking permission and authority to install, maintain and operate its lines of telephone and telegraph, consisting of necessary wires, cables and fixtures in the conduits, vaults and laterals of the Chicago Telephone Company, located in the streets, avenues and alleys in the city of East Chicago, Lake County, Indiana, to enable the petitioner to secure a through line through said city of East Chicago, and a loop therefrom to an office of the Chicago Telephone Company located in or near the business section of the city of East Chicago.

That the installation of said wires and cables is primarily for the purpose of protecting its telephone service during heavy sleet storms, which frequently interfere with service conducted over its aerial lines.

That it does not seek authority to establish and maintain a local telephone exchange service in said city of East Chicago, such local telephone service being defined to be telephone service furnished to customers or subscribers between points located within the city of East Chicago.

That while the principal business, conducted by the Chicago Telephone Company in the city of East Chicago, is exchange service, it also transacts toll business, which is similar service to that rendered by this petitioner.

The board of public works of the city of East Chicago has approved for publication an ordinance satisfactory to the petitioner. The mayor and city clerk of East Chicago have joined said board of public works approving said petition of the American Telephone and Telegraph Company of Indiana.

Comes now the Chicago Telephone Company, and enters its appearance herein in the above entitled matter, and consents to the issuance, by the Public Service Commission of Indiana, of a declaration of convenience and neces-

sity to the American Telephone and Telegraph Company of Indiana, as prayed for in said application.

The Public Service Commission of Indiana, having heard evidence in the above entitled cause and being fully advised in the premises, finds: That public necessity and convenience requires that a franchise be granted the American Telephone and Telegraph Company of Indiana, to operate its telephone and telegraph business over or under certain streets, avenues and alleys to be designated by the proper legal authorities of said city of East Chicago, Indiana.

*It is, therefore, ordered by the Public Service Commission of Indiana, That the common council of the city of East Chicago is hereby and herein authorized to grant a franchise to the American Telephone and Telegraph Company of Indiana, to construct, install, maintain and operate its lines of telephone and telegraph, consisting of the necessary wires, cables and fixtures, in the conduits, vaults and laterals of the Chicago Telephone Company, located in the streets, avenues and alleys in the city of East Chicago, Lake County, Indiana, to enable the American Telephone and Telegraph Company to secure a through line through said city of East Chicago, and a loop therefrom to an office of the Chicago Telephone Company, located in or near the business section of the city of East Chicago, Indiana.**

Dated June 4, 1915.

* On the same date, June 4, 1915, similar orders (No. 1437 and No. 1438) were issued authorizing the same applicant to install its lines in a similar manner in Hammond and Whiting.

MAINE.

Public Utilities Commission.

**IN THE MATTER OF THE COMPLAINT OF JOHN F. GOLDTHWAITE
et al. v. NEW ENGLAND TELEPHONE AND TELEGRAPH
COMPANY.**

F. C. No. 18.

Decided June 8, 1915.

Abolition of "Theoretical" Exchange and Inclusion of All Subscribers Within City Limits in City Exchange Recommended.

Petitioners, residents of Biddeford Pool, complained that they were compelled to pay a toll charge of 10 cents on each call between Biddeford Pool and Biddeford proper.

The respondent explained that Biddeford Pool was a "theoretical" or "potential" exchange, i. e., a community which is now the nucleus of what some day may be an actual exchange, that the telephone company regarded this community as an actual exchange although there was no switchboard nor any of the ordinary appliances of an exchange in use there. The rates for service within the Biddeford Pool "potential" exchange were much lower than they would have been had the regular Biddeford rates been applied, but the petitioners desired to be included in the Biddeford exchange and were willing to pay the higher rate. The respondent agreed to include the petitioners within the Biddeford exchange as desired, and the parties being in full agreement, no order was considered necessary.

Recommended: That the New England Telephone and Telegraph Company discontinue its practice of designating and regarding Biddeford Pool as a "potential" exchange and discontinue the rates, regulations and charges heretofore existing in that locality, and place all the subscribers within the limits of the city of Biddeford in the Biddeford exchange and furnish service to such subscribers in accordance with its published rules and regulations and its schedule of rates applying to the Biddeford exchange.

APPEARANCES:

John F. Goldthwaite, for petitioners.

L. N. Whitney, general superintendent, and *Frank L. Rawson*, division superintendent, for respondent.

OPINION AND RECOMMENDATION.

On March 17, 1915, the petitioners complained against the New England Telephone and Telegraph Company, alleging in substance that there was discrimination against the residents of Biddeford Pool (who are the petitioners), in that they were compelled to pay a toll charge of 10 cents for each call outside of the locality known as "Biddeford Pool." Notice was given and a public hearing held at the hotel of one of the petitioners on June 4, 1915.

The city of Biddeford is about ten miles long, and the city proper is about seven and one-half miles from the ocean at the point known as Biddeford Pool. This latter locality is a part of the city of Biddeford, but is situated around on a neck of land so that to get from Biddeford to the Pool by road is a greater distance than would be the distance in an air line. The Pool is a summer resort, and, during the vacation season, has several thousand temporary residents, but in winter it has very few permanent inhabitants. It is largely these all-the-year-round people who are the complainants in this matter. Something like twenty of them have telephones in their homes or places of business, and, in order to reach the city proper, each has to pay a toll charge of 10 cents for each call, and each person within the city proper who desires to telephone to a subscriber at the Pool has to pay the same amount. This results in practically isolating the Pool from all outside communication, except upon payment of the toll charge, and the practice of the telephone company requiring such payments has resulted in great dissatisfaction among the Pool subscribers.

The telephone company justifies its practice by explaining that the Pool is a "theoretical" or "potential" exchange, meaning, as we understand it, that wherever there is a community which is now the nucleus of what some day may be an actual telephone exchange, the company regards this community or nucleus as though it were an actual exchange, even though there be no switchboard located or any of the ordinary appliances of an exchange

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in use. The company explained at the hearing that, in practically every instance within its experience, the people themselves in these "potential" exchanges had been not only satisfied with the practice above outlined, but had in some instances insisted upon having the potential exchange established as such upon the theory that this small community within the "potential" exchange could obtain all the service required at a much lower rate than would be possible if such community were a part of a larger actual exchange. This was the actual condition, as far as rates were concerned, in the Biddeford Pool "potential" exchange, the rate being quite materially lower than it would have been had Biddeford exchange rates obtained. These residents, however, at the hearing expressed an entire willingness to pay the Biddeford exchange rates and have the privileges of the subscribers in that exchange. The company, upon its part, after a very full and frank discussion between the representatives of the company and nearly all of the complainants, expressed its entire willingness to place the locality known as Biddeford Pool within the Biddeford exchange and to abandon and eliminate the Pool as a "potential" exchange. The rate to be charged for service to these subscribers at the Pool was explained in detail by the general superintendent, and met with the satisfaction of the complainants.

It was suggested by the Commission during the progress of the hearing that if the parties were in full agreement there was no necessity for an order in this matter, and this suggestion met with the approval of all parties. We, therefore, do not issue any order at this time, but recommend that the New England Telephone and Telegraph Company discontinue its practice of designating and regarding Biddeford Pool as a "potential" exchange, and discontinue the rates, regulations and charges heretofore existing in that locality, and, instead of its previous practices with reference to subscribers at Biddeford Pool, place all the subscribers within the limits of the city of Biddeford in the Biddeford exchange and furnish its service to such

subscribers in accordance with its published rules and regulations and its schedule of rates on file with this Commission; and that within thirty days it report to this Commission whether the recommendation is accepted or not, and if accepted, what has been done, or is to be done, in accordance with such recommendation, to the end that the case may be retained without order for the present, the petition to be dismissed without prejudice in case the recommendation is complied with to the satisfaction of the Commission.

Given under the hand and seal of the Public Utilities Commission, at Augusta, this eighth day of June, A. D. 1915.

APPLICATION BY KENNEBEC FARM AND CITY TELEPHONE
COMPANY FOR PERMISSION TO ISSUE BONDS.

U—18.

Decided June 10, 1915.

Issue of Bonds Not Authorized — Call on Stockholders for Amount Unpaid on Capital Stock or Assessment of Stockholders Sufficient to Pay Overdue Bonds Recommended — Elimination of Discrimination in Favor of Stockholders Ordered.

Petitioner sought authority to issue bonds of the aggregate par value of \$5,000.

Petitioner had issued and outstanding 193 shares of stock of the par value of \$20.00 per share, but on which stockholders had paid only \$10.00 per share. Subsequent to the issue of this stock petitioner had issued \$5,000 in bonds, maturing \$1,000 per year. Of these bonds \$4,200 had been sold and \$1,000 had been redeemed. The balance, \$3,200, was still outstanding, \$2,200 being overdue and the remaining \$1,000 being due January 1, 1916. Petitioner desired by the new issue to redeem the overdue bonds, provide \$1,000 for the payment of the bonds due January 1, 1916, and apply \$1,800 for the payment of floating indebtedness, and to provide for improvements.

The constitution and by-laws of the petitioner provided that "the owner of one and not more than two shares of the capital stock of this corporation, fully paid for, at the rate of \$20.00 a share," etc., should become a member of the corporation, that assessments should be made on stockholders for "service bills," and that while any bonds issued were outstand-

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ing a sufficient amount should "annually be collected and set aside by the treasurer to pay maturing principal and interest." The certificates of stock did not state whether the stock was fully paid or assessable.

Stockholders were furnished service at \$8.00 per annum, non-stockholders at \$12.00 to \$20.00 per annum, according to the number per line. Stockholders furnished their own inside equipment.

A corrected balance-sheet showed total liabilities of \$10,761.01, total assets \$7,480.50, deficit \$3,280.51. The assets did not include anything for organization expenses, franchises, interest on capital invested, etc., as there was no evidence to show the amounts of these items. Neither was there evidence to show what amount should be deducted for depreciation.

Held: That it was the duty of the stockholders, under the provisions of the by-laws, to have paid annually enough to retire the maturing bonds.

That the stockholders are liable to creditors for the full payment of their stock to the amount of the indebtedness.

That if the stockholding subscribers had paid for service at the same rate charged other subscribers, less a fair rental for equipment furnished by them, they would have already paid in excess of their present rates the amounts that they now owe on their stock, and enough to pay a fair annual return on their investment.

That the stockholders should discharge their legal obligations before the corporation is authorized to encumber its property with further mortgages, especially in view of the fact that instead of an equity to secure such obligations it now has a deficit of approximately 30 per cent. of its entire liabilities, including stock, outstanding.

That petitioner must at once readjust its rentals to eliminate discrimination between stockholders and non-stockholders.

Recommended: That the petitioner seek to collect on or before September 1, 1915, the further sum of \$10.00 per share on its outstanding capital stock, or in lieu thereof, assessments sufficient to provide for the payment of its overdue bonds.

That the petitioner report to the Commission within ten days after said date, to which time this case will be held for final disposition.

OPINION AND RECOMMENDATION.

The Kennebec Farm and City Telephone Company filed its petition asking permission to issue bonds of the aggregate par value of \$5,000, bearing interest at 6 per cent. Notice was ordered and proved. Hearing was held on April 9, 1915, and after taking up such evidence as the petitioner was prepared to present was adjourned for further examination of the books and records, which was made on April 21, 1915.

The petitioner is a corporation organized under the General Law in 1908 and began to operate in 1909. It has outstanding 193 shares of capital stock of the par value of \$20.00 per share, which is carried in its balance sheet at the full face value of \$3,860.

January 1, 1909, the corporation made an issue of bonds amounting to \$5,000, maturing \$1,000 annually beginning January 1, 1912, which was in excess of the explicit provisions of Section 9, Chapter 55, Revised Statutes, which limited the amount of bonds issued to the amount of "capital stock of the corporation actually paid in at the time." Of this amount \$4,200 was actually sold, \$1,000 of which has been redeemed. The balance, \$3,200, is still outstanding, \$2,200 being overdue. The proposed issue is to be devoted, \$2,200 to the redemption of the overdue bonds, \$1,000 reserved to pay the bonds due January 1, 1916, and \$1,800 for the payment of floating indebtedness and to provide for extensions.

The petition was accompanied by the following balance sheet, as of March 18, 1915:

LIABILITIES.		
Six per cent. bonds.....	\$3,200 00	
Interest bearing notes and orders.....	2,317 01	
Open accounts	1,384 00	
Stock, outstanding	3,860 00	
		<hr/>
		\$10,761 01
ASSETS.		
Cash on hand and due from subscribers.....	\$85 00	
Telephones, wire and material unused.....	150 00	
Rental telephones, owned by company.....	500 00	
Switchboards	225 00	
Pole and wire lines.....	9,801 01	
		<hr/>
		\$10,761 01

It appeared at the hearing that the last item, "Pole and wire lines," was arrived at by subtracting the sum of the other asset items from the total of liabilities. Subsequently at the request of the Commission the petitioner filed a schedule of all of its assets except "Cash on hand and due from subscribers," which at its own figures, first

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cost, amounted to \$7,395.50. Add the item of \$85.00 cash and receivables, and total assets without any deductions for depreciation are \$7,480.50. This gives a reconstructed, condensed balance sheet as follows:

Total liabilities		\$10,761 01
Total assets	\$7,480 50	
Deficit	3,280 51	
	<hr/>	\$10,761 01

The stockholders own one share each of the par value of \$20.00, for which each paid \$10.00 in cash or equipment taken as cash. So that the item of stock outstanding actually represents no more than \$1,930 paid in. The certificates of stock do not recite whether the same is fully paid or assessable. The constitution and by-laws provide that "the owner of one and not more than two shares of the capital stock of this corporation, fully paid for, at the rate of \$20.00 a share," etc., shall become a member of the corporation. Provision is made for assessments upon stockholders for "service bills." The further provision is made that, while any bonds issued "are outstanding, a sufficient amount shall annually be collected and set aside by the treasurer to pay maturing principal and interest."

The only assessments thus far made appear to have been for service charges, made up in such manner as ostensibly to include interest charges, but in fact a flat net charge upon stockholding subscribers of \$8.00 per annum payable quarterly, seldom or never providing the exact amount required to meet disbursements. Included in the receipts of the corporation have been the rentals from non-stockholding subscribers. It appears to have expended in additions, etc., from its receipts, \$219.75.

The corporation has 179 stockholding subscribers, 57 non-stockholding, and 8 pay stations. Its net annual service charge or rental for stockholders is \$8.00, for non-stockholders from \$12.00 to \$20.00, according to the number on the line. The stockholders furnish their own inside equipment.

Under the provisions of the by-laws it was the duty of the officers to assess, and of the stockholders to pay, annually, enough to retire the maturing bonds. This would have taken care of the \$2,200 now overdue. Under the laws of the State the stockholders are liable to the creditors of the corporation for the full payment of their stock, to the amount of the indebtedness. This would amount to \$1,930. Neither of these amounts is sufficient to meet the deficit shown by the petitioner's corrected statement. It is claimed that the \$219.75 expended for purposes other than maintenance should be credited to assessments on stock not fully paid for, but this appears rather to have come chiefly from regular service charges from all sources, and a comparison of these charges would not indicate that the stockholding subscribers are paying more than their proportion.

It is also suggested that the schedule of assets does not include anything for organizing expense, franchises, interest on capital invested, and such other items as might be charged to capital. This appears to be true. There is no evidence to show the amount of these items, nor, on the other hand, what amount should be deducted for depreciation.

It seems that, had the stockholding subscribers paid for the service at the same rates charged other subscribers, less a fair rental for the equipment furnished by them (the petitioner claims a value of only \$10.00 each for its own rental telephones), they would already have paid in excess of their present rates the amount they now owe on their stock and enough to provide a fair annual return on their money invested. On the whole we feel that in view of the express provisions of the by-laws the stockholders should discharge their legal obligations before the corporation is authorized to encumber its property with further mortgages, especially in view of the fact that instead of an equity to secure such obligations it now has a deficit of approximately 30 per cent. of its entire liabilities, including stock, outstanding. It should also readjust its rentals so

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that there may be no discrimination between stockholding subscribers and non-stockholders. This it must do at once in order to comply with the Public Utilities Act.

It is, therefore, recommended, That the corporation seek to collect on or before September 1, 1915, the further sum of \$10.00 per share on its outstanding capital stock, or in lieu thereof assessments sufficient to provide for the payment of its overdue bonds, as it may elect; and report to the Commission within ten days after said date. To which time this case will be held for final disposition.

Given under the hand and seal of the Public Utilities Commission, at Augusta, this tenth day of June, A. D. 1915.

MISSOURI.

Public Service Commission.

IN THE MATTER OF THE APPLICATION OF THE FARMERS' TELEPHONE COMPANY OF HARRISON COUNTY FOR AN INCREASE IN RENTAL RATES AT CERTAIN PLACES AND FOR ESTABLISHING RATES AT CERTAIN OTHER PLACES.

Case No. 559.

Decided June 11, 1915.

Revision and Increase in Rates Authorized — Rule Requiring Payment for Flat Rate Local Exchange Service One Year in Advance Held Unreasonable — Other Conditions Suggested.

Applicant sought the approval of the Commission of a proposed schedule of rates which was to effect changes, including some increases, at several of the applicant's exchanges.

The Commission considered the present investment in plant, including the amount added from yearly earnings of the company, and also considered the extent of service furnished by the company and the estimated increase in revenues which would result from the increase in rates.

Held: That the proposed rates were approximately the same as those charged generally for similar service and were not unreasonable or unjust in amount.

That the Commission did not pass upon the schedule "with regard to its scientific arrangement for the proper distribution of revenue from the several classes of service furnished."

That the requirement of payment annually in advance for flat rate local exchange service was unreasonable.

That for service within the initial rate area, a rule requiring payment three months in advance for new subscribers at installation, and thereafter one month in advance, would be approved.

That for rural subscribers for whom the company furnished equipment beyond the initial rate area, a rule requiring payment for not exceeding twelve months in advance for a new subscriber at installation, and not exceeding six months in advance thereafter, would be approved.

Ordered, That the company cancel the tariffs filed and file new tariffs in which the rule in regard to advance payment has been modified as indicated by the Commission.

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APPEARANCES:

J. C. Ray, for the applicant.*J. A. Magraw*, for protestants of Gilman City.*F. D. Fulkerson*, for protestants of Brimson and Melbourne.

OPINION.

By the Commission:

The Farmers' Telephone Company of Harrison County, a corporation, filed with the Commission November 21, 1914, a formal application for the approval of the proposed schedule of rates, known as its P. S. C. Mo. No. 2, sheets 1-9, inclusive, which schedule was to effect changes, including some increases in rates for local exchange telephone service at the following central offices: Bethany, Bridgeport, Brimson, Thomas Central, Edinburgh, Gilman City, Melbourne, Mt. Moriah and Ridgeway. The case was duly heard before the full Commission at Jefferson City on April 20, 1915.

Mr. J. C. Ray, secretary of the applicant corporation, testified that the first construction of the system was made from \$20,000 cash paid into the corporation for original stock sold at its organization in 1901; that this amount of investment has been increased from time to time by the yearly net earnings of the corporation, all of which has been expended in extensions and betterments with the exception of a 3½ per cent. dividend paid in 1903 and a 6 per cent. dividend paid in 1914. The following statement is in evidence for the three years last passed:

Income, 1912	\$18,765 57
Expenses, 1912	14,422 69
<hr/>	
BALANCE INVESTED IN PLANT.....	\$4,342 88
Income, 1913	\$21,035 85
Expenses, 1913	17,619 71
<hr/>	
BALANCE INVESTED IN PLANT.....	\$3,416 14
Income, 1914	\$20,268 78
Expenses, 1914	16,788 28
<hr/>	
BALANCE INVESTED IN PLANT.....	\$3,480 50

Further testimony is that with the recent purchase of the Farmers' Mutual Telephone Company of Harrison County for the sum of \$8,000, the present investment is \$58,000 as a book value.

The following statement shows the estimated increase in revenue to be derived by the company from the proposed schedule:

680 rural telephones increased from \$10.00 per year to \$12.00 per year. Amount of increase.....	\$1,360
110 residence (town) telephones increased from \$10.00 per year to \$1.00 per month. Amount of increase.....	220
75 telephones (business), increased from \$1.50 per month to \$2.00 per month. Amount of increase.....	450
30 business telephones increased from \$1.00 per month to \$1.50 per month. Amount of increase.....	180
25 business telephones increased from \$10.00 per year to \$1.50 per month. Amount of increase.....	200
TOTAL AMOUNT OF INCREASE PER YEAR.....	\$2,410

The Commission believes that without appraisal or audit by the Commission, such approximate summary report may be accepted and considered for the purposes of this case as showing that the proposed increase in rates would not yield to the company more than a reasonable return on its investments properly in the use of the public.

The testimony in this case shows that the applicant corporation will afford its patrons through the consolidated system, on the rates proposed, local exchange service to approximately 2,000 subscribers on its own system, and approximately 3,000 subscribers on several connecting company systems without extra toll or message rate charge, which service covers a geographic area including most of Harrison County and part of Grundy County. The rates of proposed schedule are approximately the same as those charged generally over the territory for similar service, and testimony offered in the case does not show that the proposed rates are unreasonable or unjust in amount. For the purposes of this case the Commission rules on the question of the total earnings of the telephone company, and

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does not feel it necessary at this time to pass upon the schedule with regard to its scientific arrangement for the proper distribution of revenue from the several classes of service furnished.

It is the opinion of the Commission that the terms of this schedule are unreasonable in the stipulation of payment annually in advance for flat rate local exchange service. The Commission would approve terms requiring a payment for service within the initial rate area of the local exchange, of three months in advance for new subscribers, at installation, and thereafter one month in advance; for rural subscribers, for whom the company furnishes equipment beyond the initial rate area, requiring payment for not exceeding twelve months in advance from a new subscriber at installation, and not exceeding six months thereafter. The Commission feels justified on the evidence in allowing such schedule as the one proposed to become effective July 1, 1915, with changes in regard to advance payment as indicated above.

Testimony was offered by J. A. Magraw of Gilman City and F. D. Fulkerson of Brimson to the effect that service at these points was not good and adequate at the time of the hearing, but this was shown to be due to two causes, namely, that the company had not completed the work of consolidation of the recently purchased plants with its own system, nor had it completed the necessary repair of damage done at Gilman City by recent severe snowstorms. The company showed that they were then making every reasonable effort to complete this work, and would complete it within a few weeks, restoring normal service. Since the hearing in this cause Mr. Ray, for applicant, has notified the Commission by letter that the exchanges at Gilman City and Brimson have been put in first class condition and are now giving adequate service.

Since the filing of the application herein, applicant company has sold and transferred its exchange at Mt. Moriah, and for that reason the rates for that exchange should be

dropped in the revised tariffs to be filed as approved herein.

It will be easier for the applicant to cancel the tariffs filed herein and file new tariffs with rules as provided in this opinion. An order will be entered accordingly.

ORDER.

The Farmers' Telephone Company of Harrison County, this State, a corporation, having filed its application with this Commission for the approval of certain proposed schedules of rates, known as P. S. C. Mo. No. 2, sheets 1 to 9, inclusive, and affecting the rates for local exchange service at the following named places: (1) Bethany, (2) Bridgeport, (3) Brimson, (4) Thomas Central, (5) Edinburg, (6) Gilman City, (7) Melbourne, (8) Mt. Moriah and (9) Ridgeway; and a hearing upon said application having been duly had before the Commission, and a full investigation of the matters and things involved having been made, and the Commission, on the date hereof, having made and filed a report containing its findings of facts and conclusions thereon, which said report is hereby referred to and made a part hereof;

It is ordered, 1. That the Farmers' Telephone Company of Harrison County, applicant herein, be, and it is hereby, notified and required to cancel, on or before July 1, 1915, its said proposed schedules of rates, rules and regulations, P. S. C. Mo. No. 2, sheets 1 to 9, inclusive, and filed in this cause; and that said company be, and it is hereby, authorized and permitted to file a schedule of rates, rules and regulations as provided in the report filed herein, to become effective on July 1, 1915.

2. That this order shall take effect on the first day of July, 1915, and that the Secretary of this Commission shall forthwith serve upon said applicant company a certified copy of the opinion and order herein, and that said applicant company shall, within five days after receipt thereof, notify the Commission in writing whether the terms of this order are accepted and will be obeyed.

Dated June 14, 1915.

A. J. CRIDER v. T. F. WATERS.

Case No. 597.

*Decided June 14, 1915.***Complaint as to Failure to File Rate Schedule Dismissed — Alleged Discrimination in Rates Not Proven — Refusal to Connect Subscribers with Former Subscribers Whose Service Had Been Discontinued Because of Non-payment Held Justified.**

Complaint alleged that defendant (1) had failed to file his rate schedule with the Commission, (2) had discriminated against certain patrons as to rates, and (3) had refused service to patrons who had paid and offered to pay for the same.

The first charge was admitted by the defendant, but the failure to file rates was due to ignorance of the law, and subsequent to the filing of the complaint, a schedule of rates had been filed. As no intention to violate the law was shown, this portion of the complaint was dismissed.

As to the charge of discrimination in message rates and toll rates, as only the central office, not the lines radiating therefrom, was under the defendant's sole control, and as rates for through service were fixed by the connecting companies, the Commission did not find sufficient proof of discrimination by the defendant in any specific instance.

As to the complaint that the defendant refused service to patrons who had paid or offered to pay for the service, the specific complaint was that these patrons had been refused connection with other subscribers whose service had been discontinued because of non-payment of rentals.

Held: That a telephone company is not obligated to connect a calling patron with a person who is not at the time purchasing exchange service.

Restoration of Service Ordered — Refund of Payment Made for Period During Which Service Was Unlawfully Discontinued Ordered.

On the effective date of the Public Service Commission law, April 15, 1913, and until March 1, 1915, the rate in effect for all subscribers of the Waters exchange was \$2.00. On July 18, 1914, the complainant, a physician, gave the defendant a check for \$2.00 to pay for service for the year 1914. The defendant accepted the check, but thereafter contended that the rate for physicians was \$5.00 per year, and that a balance of \$3.00 was consequently due. Upon refusal of the complainant to pay \$3.00 more, the defendant on or about August 1, 1914, discontinued service to the complainant and refused further service until April 22, 1915, the date of the hearing, at which time an agreement was made to reinstate the complainant as a subscriber and continue service until the case was decided.

Held: That the complainant should pay for service furnished from April 22, 1915, the \$5.00 rate, which was the rate established for physicians by the schedule effective March 1, 1915;

That the complainant should be given a refund of 5/12 of the \$2.00 rate for the five months during which service was discontinued and for which he had paid the legally established rate of \$2.00, this refund to be credited to the complainant's account for service from April 22, 1915.

Ordered: That the defendant furnish exchange service to the complainant without discrimination and at the rates and under the rules and regulations on file or which may hereafter be filed with the Commission.

APPEARANCES:

Watson and Livingston, for complainant.

T. B. Waters, for defendant.

OPINION.

By the Commission:

The complaint in this case was filed with the Commission on January 23, 1915, by Dr. A. J. Crider, a practicing physician and surgeon who had formerly used the telephone service furnished by the defendant, against Thomas F. Waters, who operates an exchange in his farm residence in the vicinity of Brinktown, Maries County, this State, and the complaint recites three separate charges: (1) Not filing rate schedules with the Commission; (2) discriminating against patrons in rates charged; (3) refusing the service to patrons who had paid and offered to pay for same.

The hearing in the case was held before the Commission at Jefferson City on the twenty-first day of April, 1915, and both parties were present and were represented by counsel.

The first charge is admitted and there is no evidence to the contrary.

Undisputed testimony is to the effect that up to March 1, 1914, the defendant was an employee of the Maries County Independent Telephone Company, operating for said corporation the telephone exchange involved in this complaint. That on March 1, 1914, this defendant took over from the Maries County Independent Telephone Company this central office, or exchange, to operate it in future for the receipts from the service.

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Neither the defendant nor the Maries County Independent Telephone Company had filed with the Commission rate schedules prior to the bringing of this complaint before the Commission.

It is clear that the defendant in this case was in violation of the law in that he should have filed complete rate schedules and terms of service in accordance with Section 88 of the Public Service Commission Law, which provides as follows:

"Every telegraph corporation and every telephone corporation shall print and file with the Commission schedules showing the rates, rentals and charges for service of each and every kind by or over its line between points in this State and between each point upon its line and all points upon every line leased or operated by it * * *. Such schedule shall plainly state the places between which telephone or telegraph service, or both, will be rendered and shall also state separately all charges and all privileges or facilities granted or allowed and any rules or regulations or forms of contract which may in any wise change, affect, or determine any or the aggregate of the rates, rentals or charges for the service rendered. Such schedule shall be plainly printed and kept open to public inspection."

There is no record in the files of the Commission showing that the defendant in this case, nor the corporation for which he had been working, and from which he obtained the telephone system involved in this case, had been served with a copy of the Commission's General Order No. 1, founded upon and explaining this Section 88 of the law. The undisputed testimony of the defendant is that he did not willfully neglect to comply with this requirement of the law, but was ignorant of this provision of the Act, and further, that it is his desire and intention to meet in future all requirements of the law and the orders of the Commission in the conduct of his business. As the defendant has filed his schedule of rates since the complaint was made, and no intention shown to violate the law, this part of the complaint may be dismissed.

Testimony was offered at length to show discrimination in message rates or toll charges collected by the defendant, but in the light of the circumstance that the defendant

operates a central office which is the only part of the system completely under his control, and from which radiate numerous party lines owned and maintained by the farmers receiving service thereon; and the further circumstance that the two through lines, one to Vienna and one to Dixon, are not owned by the defendant, but the charges for service thereon are fixed by the connecting companies at the towns named, often involving joint rates and "other-line" charges, the Commission does not find sufficient proof of discrimination in any specific instance. While one R. L. Sneed testified that, while not a subscriber, he did on one occasion call from a neighbor's telephone and secure connection with the residence of a doctor, there is nothing to show that the defendant or his representative operating the switchboard knew the call came from one not entitled to the service instead of from the subscriber whose telephone was used.

In the matter of discrimination of rates, Section 87, paragraph 2, reads as follows:

"No . . . telephone corporation, shall directly or indirectly or by any special rate, rebate, drawback or other device or method, charge, demand, collect or receive from any person or corporation a greater or less compensation for any service rendered or to be rendered with respect to communication by . . . telephone or in connection therewith, except as authorized in this act, than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect to communication by . . . telephone under the same or substantially the same circumstances and conditions."

Mr. George Butcher testified that he was a subscriber for the service of defendant at the regular rate for residence stations of \$2.00 per year, and received the service for the year 1914. Witness stated that while he paid this amount for the service in 1915 to the defendant, "I didn't meet him and he said let that (referring to 1914 service) go."

The defendant should keep a complete record of his business in suitable account books, open to the inspection of a representative of the Commission at any time, and such accounts should show clearly that the law is complied with

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in such matters in accord with his rate schedule published and filed with the Commission.

With reference to that part of the complaint, that the defendant refused service to patrons who had paid and had offered to pay for the service, the testimony of several witnesses was that they had been refused direct connection with the telephone station of a patron of the exchange whose service had been discontinued because of the defendant's claim that said subscriber was in arrears and refused to pay for the service. As local exchange service is primarily a connection for telephonic communication from one subscriber's station to another subscriber's station, or from a public pay station to a subscriber's station, the Commission holds that the telephone corporation in furnishing such service is not obligated to connect the calling patron with a person called for who is not at the time purchasing such local exchange service, and on this point the defendant appears to have acted in accord with the requirements of the law and good telephone practice.

The most serious issue in this case involves the right of defendant to discontinue telephone service to the complainant at the time it was denied him. Complainant began to receive service on or about January 1, 1914, and was advised by defendant that the rate was later to be fixed by the Maries County Independent Telephone Company. The Public Service Commission Law of this State became effective April 15, 1913. On the date this law became effective the Maries County Independent Telephone Company, which was then operating the exchange through the employment of the defendant, had but one rate of \$2.00 to all classes of subscribers. As heretofore stated, defendant took possession of the exchange to be operated in his name, on March 1, 1914. The Maries County Independent Telephone Company failed to file the old rate of \$2.00 with this Commission until after the filing of the complaint in this case, neither did defendant Waters file new rates with this Commission until after the complaint was filed herein. On January 29, 1915, defendant filed the rates of \$2.00

per year for residence stations, \$5.00 per year for business stations, and \$5.00 per year for doctors' stations. These \$5.00 rates were to become effective on March 1, 1915, this giving the full thirty days' notice.

It is provided by Section 88, paragraph 2, of the Public Service Commission Law as follows:

"Unless the Commission otherwise orders no change shall be made in any rate, charge or rental, or joint rate, charge or rental which shall have been filed by a . . . telephone corporation in compliance with the requirements of this Act, except after thirty days notice to the Commission, which notice shall plainly state the changes proposed to be made in the schedule then in force and the time when the changed rate, charge or rental shall go into effect; and all proposed changes shall be shown by filing new schedules or shall be plainly indicated upon the schedules filed and in force at the time and kept open to public inspection. The Commission for good cause shown may allow changes in rates, charges or rentals without requiring the thirty days' notice, under such conditions as it may prescribe; all such changes shall be immediately indicated upon its schedules by such . . . telephone corporation. No . . . telephone corporation shall charge, demand, collect or receive a different compensation for any service rendered or to be rendered than the charge applicable to such service as specified in its schedule on file and in effect at that time. Nor shall any . . . telephone corporation refund or remit directly or indirectly any portion of the rate or charge so specified, nor extend to any person or corporation any form of contract or agreement, or any rule or regulation, or any privilege or facility, except such as are specified in its schedule filed and in effect at the time and regularly and uniformly extended to all persons and corporations under like circumstances for a like or substantially similar service."

Under the provisions of this statute the only legal rate in force and effect at the Waters exchange was the \$2.00 rate to all subscribers, which was in force and effect on April 15, 1913, the effective date of the Public Service Commission Law. Under the statute, as above quoted, no new rate can be filed and no change be made in any rate in existence without filing tariffs with the Commission, giving thirty days' notice, unless the Commission permits a shorter time for the effective date of such rates. Hence, under the law and the evidence in this case, \$2.00 was the legal rate for a subscriber at defendant's exchange until

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March 1, 1915, at which time the rate to merchants and doctors was legally increased to \$5.00. Complainant paid \$2.00 by check July 18, 1914, which he understood was to pay his rate for one year. Defendant received the check, but thereafter contended that it was not the full payment as contended by complainant, but that a balance of \$3.00 was due, and for that reason, on or about August 1, 1914, discontinued the service of complainant and refused further service until the date of this hearing, at which time defendant agreed with the Commission to reinstate complainant as a subscriber and continue the service until this case was decided by the Commission. Complainant should pay the \$5.00 rate which became effective March 1, 1915, from the date that his service was restored by agreement with the Commission. He should be given credit for the *pro rata* of the \$2.00 for the five months during which the service was discontinued, and for which he paid the legally established rate of \$2.00 for the full period of one year. This refund *pro rata* should be given as a credit on complainant's rates since April 22, 1915, the date of the reinstatement of his service.

An order will be entered in accordance with the views expressed in this opinion.

ORDER.

The above entitled cause being at issue upon complaint and answer on file, the testimony therein having been duly heard and submitted by the parties thereto, a full investigation of the matters and things involved having been had, and the Commission having on the date hereof made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof; now, after due consideration,

It is ordered, 1. That T. F. Waters, defendant herein, be, and he is hereby, required to renew at once telephonic exchange connection and service with the exchange at his farm residence near Brinktown, this State, to A. J. Crider, complainant herein, and to hereafter furnish complainant

such telephonic exchange connection and service without discrimination and at the rates and under the rules and regulations now in effect and on file with this Commission for such class of service, or such rates, rules and regulations as hereafter may be established and filed and approved by this Commission.

Ordered, 2. That this order shall take effect on July 1, 1915, and that the Secretary of the Commission forthwith serve on complainant and defendant certified copies of this order and the opinion filed herein.

Ordered, 3. That defendant, T. F. Waters, be, and is hereby, required to notify the Commission in the manner required by Section 25 of the Public Service Commission Law within ten days after receipt of certified copy of this order and the opinion filed herein, whether the terms of this order are accepted and will be obeyed.

Dated June 14, 1915.

CITY OF CARUTHERSVILLE *v.* SOUTHWESTERN TELEGRAPH AND
TELEPHONE COMPANY.

Case No. 372.

Decided June 28, 1915.

**Commission Without Jurisdiction to Force Utility to Pay to City Amount
Claimed to be Due Under Ordinance.**

APPEARANCES:

V. J. Higgs, for complainant.

S. H. Harris and *A. H. Bolte*, for defendant.

OPINION.

On April 27, 1914, the city of Caruthersville filed its complaint in this case, in brief, alleging that defendant company had failed and refused to pay complainant city the sum of 2 per cent. of its gross income derived from its business in said city for the year 1913, as agreed under the

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terms of certain ordinances, but had tendered to complainant a sum far less than to which said city is entitled.

On May 9 thereafter, defendant company filed its motion herein, praying the Commission to dismiss said complaint, for the following reasons: (1) Because the Commission has no jurisdiction of the subject-matter in controversy; (2) because the Commission has no jurisdiction or power in law to render a judgment for license tax, or any other tax alleged to be due to complainant, and (3) because there is no authority vested in the Commission under the laws creating it, giving it power or jurisdiction to inquire into and enter judgment for any license or other taxes alleged to be due complainant.

We shall treat the motion of defendant to dismiss for want of jurisdiction in the nature of a demurrer as confessing the facts alleged in the complaint. The sole question, then, is as to the jurisdiction of this Commission to enter an order on the facts alleged in the complaint.

It was held in the case of *Cole v. Fort Scott and Nevada Light, etc., Company*,* 1 Mo. P. S. C. 130, that this Commission has jurisdiction under the provisions of the Public Service Commission Law to require any public utility under its jurisdiction to observe all franchise agreements and requirements *relating to the giving of reasonable and just rates and charges, and reasonably adequate service and facilities, including reasonable and just rules and regulations in giving such service*. We fail to find any provision of said law which authorizes this Commission to enter such an order as complainant requests in this case; neither has counsel for complainant called our attention to any such provision.

It is a principle well settled that the enforcement of contracts and liabilities arising thereunder, except as to the regulation of rates and services, as above stated, are matters regarding which the courts and not commissions have jurisdiction.

*See Commission Leaflet No. 26, p. 1191.

In the case of *Berend v. Wisconsin Telephone Company*, 4 Wis. R. C. R. 150, 154, the rule is stated thus:

"It is scarcely necessary to say that the prayer of the petition for damages is evidently due to a misconception of the function of the Commission. The Commission is not a court and therefore has no authority to award damages for breach of contracts entered into by public utilities with their patrons. Its jurisdiction is limited in scope by statute to the regulation and supervision of the affairs of public utilities. In enforcing its mandates it issues orders which are prospective in their effect."

Again, in the case of the *City of Ashland v. Ashland Water Company*, 4 Wis. R. C. R. 273, 300, the Commission said:

"It is unnecessary to add that the construction of contracts is not a matter within the jurisdiction of the Commission, and that the courts must be relied upon for settling all disputes arising out of contractual relations of this character. Attention may be directed in this connection to the decision of the supreme court of Wisconsin in the case of *City of Superior v. Douglas County Telephone Company et al.*, 122 N. W. Rep. 1023."

Hence, it follows that the Commission is without jurisdiction in the premises and the complaint should be dismissed. An order will be entered accordingly.

ORDER.

This cause being at issue upon complaint and motion for dismissal filed herein for defendant, and having been duly heard and submitted on motion by the parties, and the Commission having, on the date hereof, made and filed its report containing its conclusions thereon, which said report is hereby referred to and made a part hereof. Now, after due consideration,

It is ordered, 1. That the complaint in the above entitled cause be, and the same is hereby, dismissed.

Dated June 28, 1915.

NEBRASKA.

State Railway Commission.

IN THE MATTER OF THE APPLICATION OF THE NEBRASKA TELEPHONE COMPANY FOR AUTHORITY TO DISCONTINUE ITS TOLL STATION AT DeSOTO.

Application No. 2428.

Decided June 8, 1915.

Discontinuance of Toll Station Authorized.

EXCERPT FROM THE MINUTES.

“Application having been made by the Nebraska Telephone Company for authority to discontinue its toll station at DeSoto and to list said station in its rate books ‘Same as Blair,’ the application being based upon the facts that outward toll receipts for DeSoto during the year 1914 amounted to only \$15.40 and that practically all of the farm houses in the vicinity of DeSoto are supplied with telephone service from the Blair exchange, and it appearing to the Commission upon due investigation and consideration that the application is reasonable and warranted by existing conditions, the desired authority was on motion granted, and it is directed that the applicant be notified by letter of the action taken.”

IN THE MATTER OF THE APPLICATION OF THE DORSEY TELEPHONE COMPANY OF DORSEY, FOR AUTHORITY TO REVISE ITS EXCHANGE RATES.

Application No. 2430.

Decided June 14, 1915.

Reduced Rates to Subscribers Owning Telephones Authorized — Discount for Prompt Payment Authorized.

ORDER.

WHEREAS, the Dorsey Telephone Company of Dorsey has made application to the Nebraska State Railway Com-

mission for authority to publish a rate of \$1.00 per month for service to subscribers who own their own 'phones and \$1.25 per month for service to subscribers who do not own their own 'phones, rentals to be paid quarterly in advance and subject to a discount of 25 cents per month if paid within thirty days from the beginning of the quarter,

And it appearing to the Commission upon due investigation and consideration that the application is reasonable, warranted by existing conditions, and that the net rates authorized herein are not increased above the present rate of applicant,

It is ordered by the Nebraska State Railway Commission,
That the desired authority be, and the same is hereby, granted, the rates as above authorized to become effective from and after September 1, 1915.

Made and entered at Lincoln, Nebraska, this fourteenth day of June, 1915.

IN THE MATTER OF THE APPLICATION OF THE NEBRASKA TELEPHONE COMPANY FOR AUTHORITY TO INCREASE ITS TOLL RATES BETWEEN SPALDING AND BARTLETT AND BETWEEN SPALDING AND ERICSON.

Application No. 2435.

Decided June 14, 1915.

Increase in Toll Rates Authorized — Comparison with Rates of Second Company for Service Between Same Points Made.

ORDER.

WHEREAS, the Nebraska Telephone Company has made application to the Nebraska State Railway Commission for authority to increase its toll rates between Spalding and Bartlett and between Spalding and Ericson from 15 cents to 25 cents for the initial period of three minutes,

And it appearing to the Commission upon due investigation and consideration that the similar rates of the Bartlett

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and Ericson Telephone Company for the same service are 25 cents, and that the application is reasonable and warranted by existing conditions,

It is ordered by the Nebraska State Railway Commission,
That the desired authority be, and the same is hereby, granted, the rates as above authorized to become effective from and after July 1, 1915.

Made and entered at Lincoln, Nebraska, this fourteenth day of June, 1915.

NEVADA.

Railroad Commission.

RAILROAD COMMISSION OF NEVADA v. THE BELL TELEPHONE COMPANY OF NEVADA.

Case No. 260.

Decided June 5, 1915.

**Rates for Extension Sets Fixed — Higher Rate for Extension with Bell
than for Extension Without Bell Authorized — Small Aggregate Net
Return Not Justification for Excessive Charge for Particular
Service — Effect of Case as Precedent Not a
Consideration for the Commission.**

On motion of the defendant a rehearing was had in this case. The original order* provided that in lieu of the then existing rates for extension sets, ranging from 50 cents per month for extensions in residences to \$1.00 per month for extensions in business houses, the company should charge not more than 50 cents per month for each extension within the same building or apartment.

Complaint was made that the aggregate net earnings of the defendant in Nevada was so small that any reduction in rates for special services would seriously decrease the earnings, and also that such a reduction as was ordered in this case would set a bad precedent.

Held: That the fact that a public service corporation is earning but small net returns in the aggregate will not justify an excessive charge for a particular service; regard must be had for everything recognized by courts and commissions in the determination of the reasonableness of rates and charges;

That the Commission cannot be influenced by any consideration of the precedent which may be established, that were the matter of precedent to be considered, the weight to be given to this consideration would be difficult to determine; that the same rate would not necessarily be prescribed by the Commission in another case where the facts were widely different;

That the total value of the plant in Nevada and the earnings thereon were practically of no concern as the extension service is only a small part of the company's business;

That while every element entering into the operation of a company should be considered in a rate adjustment, and while it would not be fair

*See Commission Leaflet No. 31, p. 55.

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to take as the sole factor in determining the charge that a telephone company should make, the cost of installing an extension, nevertheless this element should be given some weight;

That at the 50-cent charge, the company would collect in one year 70 per cent. of the cost of installation, and this fact is important in determining the question of whether 50 cents is a reasonable rate, although it must also be considered that to furnish the service, the entire plant and force of the company are used to a greater or less extent;

That the argument of the defendant that extension service is detrimental to the service as a whole is a cause of complaint for the patrons, and not for the company which voluntarily established the policy of putting in extensions; that a higher rate does not remove this detriment to the service if any there be;

That the assumption that the \$1.00 rate is fair to persons using the extension and that it is just the rate necessary to hold the number of extensions down to a proper limit is purely arbitrary;

That an increased number of calls is caused by the installation of extension sets is to be expected, that probably no additional expense is involved, but even if so, additional expense must be expected, where additional service is rendered and additional revenue is collected;

That the rate of \$1.00 for extension sets is unreasonable; that extension service with a bell is worth more to a patron than service without a bell, and incidentally it costs the respondent something to install a bell; that, therefore, the previous order should be modified and the rate for an extension with a bell should be fixed at 65 cents, while for an extension without a bell the 50-cent rate should stand.

Policy of Allowing Reserve for Depreciation Discussed — Opinion of Chief Commissioner Bartine.

Held: That where a plant is maintained at full standard efficiency out of current revenues no addition should be made to the expense account on the score of depreciation, except in cases where the conditions under which the plant is operating may be fairly considered as temporary in character;

That the permanency of Reno and Sparks, to which extension set service was practically confined, is reasonably certain;

That the net return for service furnished in these cities was 3.7 per cent., but this net was figured after 7.78 per cent. had been deducted for reserve for depreciation; that a reserve for depreciation of 7.78 per cent. is excessive as the plant after many years of service has not depreciated more than 10 per cent. in a material sense, and from the standpoint of operating efficiency has not depreciated at all;

That a reserve of 3 per cent. would be sufficient to cover every contingency likely to arise, and if this reserve were made, the net return would be over 8 per cent., which would not be greatly, if at all, inadequate.

OPINION AND ORDER ON REHEARING.

BARTINE, *Chief Commissioner*:

The original order* in this case provided that in lieu of the then existing charges for extensions of telephone service, the respondent company should charge not more than 50 cents per month for each extension within the same building or apartment. The charges in effect at the time such order was made ranged from 50 cents in residences to \$1.00 in business houses.

The respondent company, being dissatisfied with the order as made, asked for a rehearing, which was granted.

It is evident that the respondent company attaches great importance to this case, for it was very strongly represented at the hearing and made a most elaborate showing.

In his opening statement, counsel for the respondent company declared that it was not being treated as a general rate case, the objection being simply to the reduced rates for extension service; but at the same time he claimed that the aggregate net earnings of the company within the State of Nevada were so small that the company could not consider, without strong objection, any reduction in the rate for special service which would cut seriously into the earnings. The case as made was about as thorough and exhaustive as if the entire schedule of rates had been under fire. At one stage of the hearing, counsel stated that the company did not object so much to the amount that would be directly lost by the reduction as it did to the precedent which would be established.

With respect to these two points, it is proper to observe, first, that the fact, if it be a fact, that a public service corporation is earning but small net returns in the aggregate, will not justify an excessive charge for a particular service, and, second, that in deciding this matter the Commission can only consider whether the rate is reasonable, and cannot be influenced by any consideration of the precedent which may or may not be established. The Commission

*See Commission Leaflet No. 31, p. 55.

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is dealing now with this specific case, and every case depends upon its own facts and circumstances. If the matter of alleged precedent were to be considered, it would be difficult to determine how much weight should be given to it. It does not follow that in some other case, where the conditions were widely different, the same rate would be prescribed by the Commission, as has been named with respect to this one.

Counsel for the respondent laid considerable stress upon the statement contained in the former opinion that the situation or condition of the company should be considered as a whole, and that the merits of the matter under review could not be determined solely upon the basis of the particular expense connected with the extension service. That view, as expressed in the former opinion, is adhered to, but it is not to be considered as meaning that an excessive charge can be made for a special service merely because the business as a whole may yield but meagre profit. The principle is well settled that no excessive charge can be justified upon the ground that aggregate earnings are small. The earnings and expenses of a public utility are not the only things to be considered. Regard must be had for everything that is recognized by courts and commissions in the determination of the reasonableness of rates and charges.

The evidence introduced on behalf of the respondent company tended to show that the total value of the plant new was \$340,058.52, and that upon this valuation the company was realizing no profit in the State of Nevada. It appeared further that the extension service of the company was confined mainly to the cities of Reno and Sparks and that outside of those cities the number of local extensions was negligible. The evidence further tended to show that the value of the property used in serving the people of Reno and Sparks was about \$155,000, that upon this portion of the service the gross revenues were \$62,801, and the total expenses \$57,562, leaving a net of \$5,239, or about 3.7 per cent.

It is to be noted, though, in this connection that the company has carried into the expense account 7.78 per cent. for depreciation. I have always felt that the policy of allowing a percentage for the depreciation of a public utility plant has been carried too far by courts and commissions, although the conclusion reached in this opinion will be in nowise dependent upon that feeling. What I say herein is simply an expression of my own ideas, and I have no desire to attempt to bind my associates in any way. It seems to me that in a case where a plant is maintained at full standard efficiency out of the current revenues, no addition should be made to the expense account on the score of depreciation, except in cases where the conditions under which the plant is operating may be fairly considered as temporary in character; for example, one where the plant is operating in a mining camp, or a lumber town which, in the not distant future, may be practically out of business, thus leaving the plant of little or no value except as "junk," to use an expression ordinarily employed by utility men themselves. But the permanency of Reno and Sparks is about as well assured as that of any other two cities in the United States. There is nothing to indicate that either of them will ever be smaller than it is at the present time, or furnish a smaller business to the respondent company. On the contrary, everything connected with their business life is suggestive of substantial future growth. Hence, the reason which has been given by representatives of other utilities in hearings before this Commission and elsewhere that a heavy percentage should be allowed for depreciation, even though the plant were maintained at full standard efficiency, appears to have very little application to this case. A simple illustration, it seems to me, will show the unsoundness of the policy of allowing a large arbitrary percentage for depreciation in a case like the present one, where the business is almost of a certain permanence and increase, and where the plant is maintained at high standard out of current earnings.

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Suppose that after taking operating expenses from gross earnings, a utility is left with a net return of 10 per cent. upon the fair value of the plant. Now, assuming the business to be permanent, it will scarcely be denied that 10 per cent. is a fair return upon a large investment. But, let us further assume that the company has carried into its expense account 10 per cent. additional for depreciation, and that after this is done the rates and charges are still productive of a net return of 10 per cent. Obviously the net profits of the company in such case are 20 per cent.

The 10 per cent. set apart as a depreciation fund will absolutely reproduce the property at the end of 10 years; meanwhile, the net earnings have gone on at the rate of 10 per cent. per annum upon the value of the property. At the end of 10 years we begin with a new condition. The company has got all of the investment back, and it is now proceeding to earn 10 per cent. upon a plant which has actually cost it nothing; that is to say, for which the patrons of the company have paid. I give this illustration merely for the purpose of suggesting the unwisdom and injustice of carrying the idea of a depreciation fund too far. It seems to me that under the conditions existing in the cities of Reno and Sparks 7.78 per cent. on depreciation account is excessive. The testimony of respondent showed that in a material sense, after many years of service, the property was not depreciated more than 10 per cent., if any, and that from a standpoint of service efficiency, there was no depreciation at all, but rather the reverse, because the plant was "tuned up," as the witness expressed it. In the case of water companies, frequently no more than 2 or 2½ per cent. is allowed for depreciation. If we assume 3 per cent. to be fair in this case, and it seems to me that it is sufficient to cover every contingency likely to arise, it would leave 4.78 per cent. to be added to the net income of the company, making it more than 8 per cent. upon the Reno and Sparks business. Upon this basis it does not seem to me that the earnings upon the portion of the plant used in the service of Reno and Sparks are very greatly inadequate,

if there be any inadequacy at all. But this is really not material to the issue in the case. It is referred to merely because the representatives of the respondent seemed to attach so much importance to it.

With regard to the total value of the plant in Nevada and the earnings thereon I may say that these are matters with which we have practically no concern at the present time, as we are dealing solely with the extension service, which is only a small part of the company's business. As already stated, every element entering into the operations of a company should receive due consideration in the adjustment of rates. Therefore, while it would not be fair to take as the one sole factor the cost of installing a telephone extension and comparing it with the charge, nevertheless it is an element which should properly be given some weight. Representatives of the company itself strongly urge the cost of installation as a matter to be considered. Upon this point respondent's testimony tended to show that the average cost of installing an extension was \$8.56. At the rate of \$1.00 a month the cost of installing the extension would be paid for in about eight and one-half months; 50 cents a month for such service would be \$6.00 per annum. It therefore appears that if we were to consider that element alone, the company would, in a single year, at the 50-cent rate, collect in charges 70 per cent. of the cost of installing the extension. Clearly, though, as intimated in the former opinion, this would not be a fair way of determining the actual value of the service, because in order to make that service effective the entire plant and the entire force of the company are used to a greater or less extent. Still, when it is considered that in the brief period of one year the company would receive in charges about 70 per cent. of the additional expense incident to the extension service, it certainly has a bearing upon the question of whether 50 cents per month would be a reasonable rate.

Counsel for the respondent company also strongly urged that the extension service is detrimental to the service as a whole. The logic of this contention is not apparent. The

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company has itself voluntarily established the policy of putting in extensions. If they are detrimental to the service it is the patrons who have cause for complaint and not the company. It does not in any manner remove the detriment for the company to charge a higher rate for the extension. The contention, though, is made that the higher rate charged tends to discourage the installation of extensions and reduce their number. This proposition seems quite as illogical as the one just referred to. It is a purely arbitrary assumption upon the part of the company that the \$1.00 rate is right; that it is not only fair to the person using the extension, but that it is just the rate necessary to hold the number of extensions down to a proper limit.

Evidence was also introduced by the respondent tending to show that the extension service greatly increases the number of calls. This may be conceded. The natural result of putting in an extension is to increase the number of calls. If it did not, it is hard to see where the patron would derive very much benefit from the extension. It was not shown, however, with any degree of clearness, how much the increase in the number of calls added to the expense account of the company. On its face it looks as if it probably entails more work upon the operators, keeps them somewhat busier, but it was not made to appear that the installation of extensions had obliged the company to add to its operating force. Even if it did, some additional expense must be looked for when an additional service is rendered and more revenue collected.

The conclusion reached in the former opinion that the \$1.00 rate was excessive has not been changed by the elaborate showing made on behalf of the respondent. But it does appear upon further consideration that service with a bell is worth more to a patron than service without a bell; besides which, it costs the respondent something to put in the bell. It is deemed proper, therefore, that the rate of an extension with a bell should be fixed at 65 cents while for all extensions without bell, the 50-cent rate as prescribed in the former order should stand. The order here-

tofore made should be modified in conformity with these views, and made effective, from July 1, 1915.

ORDER.

Pursuant to the conclusions reached in the foregoing opinion, the order heretofore made and entered in this proceeding is hereby modified so as to read as follows:

Ordered, That from and after July 1, 1915, the charges of the Bell Telephone Company of Nevada for telephone extension service within the same building or apartment shall be no more than 50 cents per month for each separate extension without bell, and 65 cents per month for each separate extension with bell.

Dated June 5, 1915.

NEW JERSEY.

Board of Public Utility Commissioners.

**IN THE MATTER OF THE COMPLAINT OF P. B. MEERBOTT *v.*
NEW YORK TELEPHONE COMPANY.**

Decided June 10, 1915.

" Locality Charge " Held Not Improper.

Complaint was made that the direct line residence rate of the defendant at Secaucus was unreasonable.

The rate for direct line residence service at Secaucus was \$60.00 per annum, this charge being made up of a base rate of \$42.00 plus a "locality charge" of \$18.00.

The usual charge for telephone service furnished to subscribers outside the base rate area is made up of the base rate plus a mileage charge, but in certain instances departures from the standard schedule are necessary, and to conform to municipal or natural boundaries, or in outlying sections beyond the base rate area when the real estate development is in the nature of a colony having a community of interests, it is often found advisable to apply an average charge throughout such community in order to avoid the variety of charges which would result from the strict application of the standard scale. This average charge is known as a "locality charge" and is based on the average excess mileage of the various subscribers in the locality.

Held: That such a method of treating an isolated community is not necessarily improper and the application of such a rate may result in the greatest good to the greatest number.

" Locality Charge " in Addition to Base Rate Held to be More Advantageous than " Theoretical " Exchange Rate Plus Toll Rate.

Two methods of furnishing service to Secaucus were feasible, one to make Secaucus a separate exchange area within which a low base rate would be effective, but in addition to which toll rates would be charged on all messages to places outside of Secaucus. This service might be rendered by the installation of a switchboard at Secaucus or by a switchboard installed at any other place, in which case the Secaucus area would be a "theoretical" exchange area. The other basis upon which service might be furnished was to include Secaucus as a part of Union local service area with all the privileges of the Union area, and to charge the Union base rate plus a "locality charge."

Held: That considering the use made of the telephone by Secaucus subscribers, the second method furnished the more desirable service.

"Locality Charge" in Addition to Base Rate Held to be More Advantageous than Base Rate Plus Mileage Charge.

Held: That as a strict application of the mileage rate would increase the rate for about 68 per cent. of the subscribers in Secaucus, the "locality charge" is better suited to the territory affected because it results in greater advantage to the community as a whole.

That the Board does not pass upon the reasonableness of the base of either charge because the record does not contain the facts necessary to such a determination.

APPEARANCES:

Raymond Dawson, for petitioner.

George R. Grant, for respondent.

REPORT.

The hearing in this matter was held April 9, 1915, at the Chancery Chambers in Jersey City, at which representatives of the complainant and the telephone company were present.

P. B. Meerbott, the complainant, in June, 1911, made application for telephone service at his residence on the southwest corner of County Road and Paterson Plank Road, Secaucus. This application was for a direct line, which called for the payment of \$42.00 per annum, for which six hundred calls might be used.

It appears that the telephone company later discovered that the contract with Mr. Meerbott was not in accordance with the regular schedule of rates for service in Secaucus, and notice was sent to him that the regular rate for direct line service in Secaucus was \$60.00 per annum, this being made up of the base rate charge of \$42.00 per annum plus a so-called "locality charge" of \$18.00 per annum.

It appears also that the usual basis upon which telephone service is furnished is an annual charge for which service, without additional toll charges, is available within an area called the base rate area.

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Ordinarily, the base rate area includes the territory within a radius of one and one-half miles from the central station. From $1\frac{1}{2}$ miles to $2\frac{1}{2}$ miles air line measurements are used to fix mileage charges, which are established on quarter mile zones for the distance beyond the base rate area. Beyond this distance, the mileage charge is based on route measurements, and is added to the proper charge for the air line mileage zone.

Departures from the standard schedule are found necessary in some instances in order to conform to municipal or natural boundaries. In outlying sections, when the real estate development is in the nature of a colony having a community of interests, it is also found advisable to apply an average charge throughout such colony in order to avoid a variety of charges, which would result from the strict application of the standard schedule.

The usual mileage charge is as follows:

For each quarter mile or fraction thereof:

Individual or auxiliary line, or a private branch exchange trunk	\$9 00 per annum
Two-party line per station.....	4 50 per annum
Four- or four- plus party line—per station.....	2 25 per annum

Secaucus is practically an island in the Hackensack Meadows. It is bounded on the west by the Hackensack River, and the meadows bordering it; on the east by the Croma Kill and Penhorn Creeks and by an area of meadows which is perhaps a mile wide.

In furnishing service to such an area, the telephone company has adopted what they call a "locality rate," this rate being based on the average excess mileage of the various customers located in the "locality" in question.

In the opinion of the Board, such a method of treating an isolated community is not necessarily improper. The application of such a rate may result in the greatest good to the greatest number.

It appears that prior to 1908 or 1909, there were very few telephones in Secaucus, and these were supplied over

a limited number of lines. The service was not of the best, and there was more or less demand for a better service. Before establishing a more comprehensive service, however, the company negotiated a new franchise ordinance under which permanent cable was installed and carried along the same line of poles which carry the main trunk lines from Hudson County to Rutherford, Passaic, Paterson and beyond.

Telephone service in Secaucus might be furnished under two general plans: (1) by separating Secaucus into an area by itself, within which a low base rate would be effective, but in addition to which tolls would be paid for all messages sent to Union, Hoboken, Jersey City and to all other places outside of Secaucus.

The establishment of such a local area would not necessarily involve the installation of a switchboard, as service is frequently furnished under such circumstances from a switchboard located in another place, the area, however, being referred to as a "theoretical area."

(2) The second basis on which service might be furnished, and which is the basis which the company has adopted in serving Secaucus, is to include it as part of the Union local service area, every subscriber in Secaucus being able to call every subscriber in the Union area without any question of toll calls. As a matter of fact, the subscriber in Secaucus, because of his being a part of the Union local service area, is entitled to call without additional toll charge, any subscriber bearing the designations: Union, Hoboken, Bergen, Jersey City and Webster.

Whether the first plan or the second is more advantageous in this particular territory depends upon the character of the use made of the telephone by the Secaucus subscribers.

Mr. F. H. Fuller (testimony April 9, p. 41), stated that:

"In May, 1914, we obtained a special ten-day record of the service of the Secaucus subscribers, which indicated that 50 per cent. of the calls from Secaucus to subscribers to stations within the Union central office district were for subscribers located in Union, and not in Secaucus.

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Forty-two per cent. terminated in Secaucus. That record, however, did not include calls from Secaucus subscribers to Hoboken, Jersey City, Bergen and Webster which they could and did obtain as local. The record was not complete in that way, but it is our feeling that 80 to 85 per cent. of the traffic, local traffic, originating in Secaucus terminates outside of Secaucus."

If the above statement is even approximately correct, it indicates that the Secaucus subscribers are better served by being included as part of the Union local service area than they would be if set apart in a theoretical area by themselves.

The only question to determine, then, is as to whether the so-called "locality rate" is fair to the Secaucus subscribers.

The ordinary mileage rate has been stated above. The "locality rate" so-called applied by the company to all subscribers in Secaucus is as follows:

Individual line	\$18 00
Two-party line	9 00
Four-party line	4 50

On this basis, the charge to Mr. Meerbott was \$42.00 plus \$18.00, or \$60.00 per annum.

It should be noted that the \$42.00 rate was reduced to \$39.00 per annum on February 1, 1915.

Mr. Fuller (testimony April 9, p. 42) was asked the following questions:

"Q. In establishing your local rate for Secaucus you took what as the basis?"

"A. In establishing the Secaucus local rate we assumed that we had the right to charge mileage, the average mileage of Secaucus subscribers to the Union base rate area, which, as previously explained, is somewhat elongated and contracted on the sides, due to natural barriers. In order, though, not to work any hardship on Secaucus due to the contraction of the base rate area from the theoretical one and a half miles, the standard base area, we described a one and a half mile circle from the Union central office. Then taking the average length of the Secaucus line, air line distance, from that mile and a half circle, we found that those lines averaged sixty-three hundredths of a mile, or a trifle over one-half mile. For that reason, one-half mile was taken as a fair and equitable charge throughout the Secaucus section."

On further being asked what the strict application of the mileage rate would amount to, Mr. Fuller stated:

"That would amount to, in mileage charge, \$27.00 for individual line service; \$13.50 for two-party line subscribers; and \$6.75 for four-party subscribers. Adding those rates to the main rates applicable in Union, the total charge for telephone service in Secaucus would amount to \$66.00 for individual line, \$49.50 for two-party line service, and \$36.75 for four-party line service, as compared with our filed rate of \$57.00 for individual line service, \$45.00 for two-party line service, \$34.50 for four-party line service. All this service, it being understood, is for the minimum 600 messages on a measured service basis."

If the ordinary mileage rate was applied to the customers in Secaucus, the result would be as testified to by Mr. Fuller (testimony April 9, p. 38):

"One subscriber would be reduced \$2.25 per year; four subscribers would be reduced about \$4.50 each per year; ten subscribers would pay the same rate; fifteen subscribers will be increased $\frac{1}{4}$ mile mileage either by \$9.00 for individual, \$4.50 for two-party service, \$2.25 for four-party service, depending upon what service each contracted for. Fourteen subscribers would be increased $\frac{1}{2}$ mile mileage \$18.00 for individual service, \$9.00 for two-party service, \$4.50 for four-party service. Two subscribers would be increased \$36.00 each; one subscriber would be increased \$9.00."

The following question was asked Mr. Fuller:

"Q. Have you estimated in percentages the effect which would be brought about to these subscribers?"

"A. Yes, sir. Sixty-eight per cent. of the subscribers in Secaucus would be increased, have their rates increased, and the total average revenue in Secaucus would be increased about 11 per cent. if we established our regular method of mileage charges."

In the instant case, upon the record as it stands, with the statements of the company uncontradicted, we think the "locality rate" is better suited to the territory affected because it results in greater advantage to the community as a whole.

The Board does not pass upon the reasonableness of the base of either charge, because the record does not contain the facts necessary to such determination.

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The complaint will be dismissed, and an order to this effect will enter.

ORDER.

This case being at issue upon complaint and answer on file and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report, containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof.

It is ordered, That the complaint in this proceeding be, and is hereby, dismissed.

Dated June 10, 1915.

NEW YORK.

Public Service Commission — Second District.

IN THE MATTER OF THE CANCELLATION OF OBSOLETE CONTRACTS.

Dated May 28, 1915.

**Company Held to be Acting Properly in Cancelling Terminable Obsolete
Contracts.**

CIRCULAR LETTER.

The Commission having received a number of inquiries and protests from telephone subscribers in New York City relative to notices of cancellation of old telephone contracts, served upon them by the New York Telephone Company, it appears that there exists some misapprehension in regard both to the status of these contracts and the relation thereto of the recent decision of the Commission in the *New York City* rate case. It is accordingly deemed advisable to make a general statement relative to this matter.

Subdivisions 2, 3, and 4 of Section 91 of the Public Service Commissions Law respectively read as follows:

"2. No telegraph corporation or telephone corporation shall directly or indirectly or by any special rate, rebate, drawback or other device or method charge, demand, collect or receive from any person or corporation a greater or less compensation for any service rendered or to be rendered with respect to communication by telegraph or telephone or in connection therewith, except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect to communication by telegraph or telephone under the same or substantially the same circumstances and conditions."

"3. No telegraph corporation or telephone corporation shall make or give any undue or unreasonable preference or advantage to any person, corporation or locality, or subject any particular person, corporation or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

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"4. Nothing in this chapter shall be construed to prevent any telegraph corporation or telephone corporation from continuing to furnish the use of its lines, equipment or service under any contract or contracts in force at the date this article takes effect or upon the taking effect of any schedule or schedules of rates subsequently filed with the Commission, as hereinafter provided, at the rate or rates fixed in such contract or contracts; *provided, however, that when any such contract or contracts are or become terminable by notice, the Commission shall have power, in its discretion, to direct by order that such contract or contracts shall be terminated by the telegraph corporation or telephone corporation party thereto, and thereupon such contract or contracts shall be terminated by such telegraph corporation or telephone corporation as and when directed by such order.*"

It should be particularly noted that while the statute thus quoted does not absolutely forbid the continuance of discriminatory contracts existing at the time of enactment of the law, it broadly implies that sooner or later all such contracts must be abolished. The manifest spirit and intent of the law is that no discriminatory contracts or practices which afford one telephone subscriber or locality any advantage over other subscribers or localities similarly situated, shall be made or permitted; and the statute has been construed by the Commission as intending that within a reasonable time after its enactment all such discriminatory contracts and preferences shall be terminated and discontinued. Under the final clause in subdivision 4, above quoted, the Commission is clothed with authority to compel by order immediate termination of such contracts, such authority impliedly to be exercised if the corporation shall not display proper diligence in the matter.

Under date of June 16, 1914, this Commission did issue such an order* but upon further consideration suspended it before it became effective in order to "be more fully advised concerning the character and number of existing contracts providing for rates less than those fixed in the established schedules." The telephone company thereupon voluntarily recalled the cancellation notices which it had issued upon the receipt of the original order. On the strength of this action by the telephone company, subscribers who at

* See Commission Leaflet No. 33, p. 788.

the time appealed to the Commission were informally advised that they might "disregard" the cancellation notices; and this advice seems in some instances to have been mistakenly interpreted as meaning that the Commission had actually compelled the telephone company to continue the so-called "obsolete" contracts when in fact the telephone company might legally have enforced the cancellations if it had so elected. The company, however, has apparently chosen to defer such cancellations until after the determination in the rate case and is now acting within its legal rights in cancelling terminable contracts precisely the same as subscribers would be if they ordered the telephone company to discontinue the service covered by their existing contract.

The status of the old non-standard contracts has therefore in no way been changed by any order of the Commission or by its determination of the *New York City* rate case.

Having elected to terminate the old non-standard contracts on June 30, next, the telephone company may thereafter legally quote only its filed rates as modified by the order of the Commission, becoming effective July 1, 1915. The application of the rates specifically fixed by the recent order of the Commission are, by the terms of the order, to remain in effect for three years, and will not be reviewed upon complaint during that time. The rates so fixed covered the major part of the base rates of the telephone company's schedule.

In the cancellation of all discriminatory and preferential contracts, the telephone company by its own action has relieved the Commission of the duty which the legislature evidently contemplated should sooner or later be performed through the issuance of an order requiring precisely such action if, after the lapse of a reasonable period—and it would seem from every point of view that the five years which have elapsed since the enactment of the law must be considered such reasonable period—the corporation itself should not have acted upon its own initiative.

Dated May 28, 1915.

IN THE MATTER OF THE COMPLAINT OF MILFORD D. WHEDON
v. NEW YORK AND VERMONT HOME TELEPHONE COMPANY,
AS TO CHARGE FOR EXTENSION TELEPHONE.

Case No. 2582.

*Decided June 9, 1915.**

Charge for Extension Telephone Held Reasonable.

Complainant alleged that the charge of 50 cents per month for extension telephones at Granville was excessive and should be reduced to a maximum of 10 cents per month, and that the action of the company in refusing to permit him to purchase an extension set and connect it with the company's system was unreasonable.

A study of the extension telephone service showed that the installation of extension telephones on message rate lines and flat rate lines resulted in an increase in traffic of about 15 per cent. Fifteen per cent. of the regular main station traffic expense for stations in exchanges operating under conditions similar to Granville was \$.595. Fifteen per cent. of the commercial expense applicable to main station telephones at Granville was \$.692. The annual plant charge per extension station was approximately \$3.13, making a total estimated annual expense of \$4.417, exclusive of any expense for workmen's compensation insurance, fire insurance, pension of employees, or welfare work, and also exclusive of any sum to provide for a return on the investment.

The respondent, which was an associate company of the American Telephone and Telegraph Company, known as the Bell system, charged a minimum rate of 50 cents per month for all extension telephones throughout the State of New York, and this minimum was also charged generally by Bell companies throughout the United States as well as by many other companies not associated with the American Telephone and Telegraph Company. Commissions of the various states in passing upon the question of reasonable rates have in no instance decided that a rate of 50 cents per month for extension telephone service is unreasonable.

The complainant maintained that the charge for extension telephones should be based upon a sliding scale depending upon the rate for main station.

Held: That if no fairly uniform rate for this kind of service was fixed, the result would be needless confusion and expense and the question of the charges made for this service would necessarily be fought out in every community where the telephone system was in operation.

That, considering that an extension telephone in Granville permits communication not only with people in Granville but with people all over the country, and considering the accommodation furnished by an extension telephone, the charge of 50 cents is not unreasonable.

*Application for re-argument denied, June 28, 1915.

Complaint as to Refusal of Company to Allow Attachment of Privately Owned Extension Telephone to Its Line Dismissed.

On May 1, 1912,* the Commission dismissed the complaint as to the refusal of the company to allow the complainant to purchase an extension telephone and attach it to the company's system.

OPINION.

CARR, Commissioner: This proceeding is based on a complaint by Milford D. Whedon of Granville, New York, against the New York and Vermont Home Telephone Company, which complaint was filed on October 28, 1911. The complainant is a resident and tax payer of Granville, New York, and alleges in his complaint that he has a telephone in his residence and also in his office, paying \$1.00 a month for the residence telephone and \$1.50 a month for the office telephone. He alleges that the monthly charge of 50 cents for what is known as an extension 'phone is excessive and unjust and should be reduced to a maximum of 10 cents a month. He further complains because the telephone company refuses to permit him to purchase and install an extension 'phone in his residence and also in his office and connect them with the company's system and alleges that this action on the part of the company is unjust, unfair and unreasonable; that he ought to be permitted to do this at his own expense and that if this were done, there should be no charge made by the telephone company for the extension 'phones.

The telephone company put in an answer in the latter part of November, 1911, denying the allegations in the complaint and alleging that the monthly charge of 50 cents for extension telephone service was just and reasonable.

The Commission dismissed the complaint as to all matters therein set forth except the monthly rental of 50 cents, and an order to that effect was made on May 1, 1912.* The complainant having advised the Commission that he wished to prosecute the complaint as to the monthly rental charge, was given permission to do so, and hearings were held by

*See Commission Leaflet No. 5, p. 35.

the Commission on October 9, 1912, and March 11, 1913. At these hearings, the complainant was present in person and the respondent was represented by counsel, and the New York Telephone Company, which had been permitted to intervene, was also represented by its counsel. The entire question of the reasonableness of the charge for the extension 'phones was gone into very exhaustively by the telephone companies for the purpose of arriving at the cost of the service. The telephone companies selected a large number of stations in their different divisions throughout the State for the purpose of determining as nearly as possible the actual expense of operating the extension 'phones. This study developed the fact that as nearly as it could be estimated, there was an increase in traffic resulting from the installation of extension 'phones on message rate lines and flat rate lines of approximately 15 per cent. It was, of course, practically impossible to determine this absolutely but as a result of the study, the witnesses for the telephone company testified that in their best judgment, there was an increase of at least 15 per cent. in local traffic wherever extension 'phones were installed. Using this percentage of increase, they also determined that the extension 'phones should bear this proportion of the regular traffic expenses. Taking six offices in the State of New York operating under conditions similar to those at Granville, it was determined that the actual traffic cost per extension station based on 15 per cent. of the main station cost would be \$.595 per annum. The witnesses of the telephone company stated that under the circumstances as developed by the study of this question, it would be fair to charge the extension 'phones with 15 per cent. of the commercial expense applicable to the main line 'phones. For this purpose, numerous groupings were made covering all divisions in the State. This showed a minimum commercial expense of \$.692 per annum in the Manhattan-Bronx division. The matter was still further developed by taking other New York offices which were fairly comparable to Granville and it was found that in each of these offices, the annual com-

mercial expense ran from \$.777 in Fishkill to \$1.10 at Plattsburgh. The commercial expense for each extension telephone in Granville was also worked out on substantially the same basis and amounted to \$.692 per annum. The study was still further continued for the purpose of determining the total investment per extension station. To accomplish this, the telephone company took a total of 500 orders, excluding the New York City division, and the result showed an investment per extension station of \$10.178 and the annual plant charges as determined by the telephone company according to its regular practice amounted to \$3.132. The total estimated annual expense, therefore, as developed in the progress of the case, was as follows for extension 'phones in Granville:

Traffic expense	\$.595
Commercial expense .....	.692
Annual plant charges.....	3.13
	<hr/>
	\$4.417

In the figures submitted by the telephone company no amounts were included for workmen's compensation insurance, fire insurance or for pensions of employees or welfare work which it may be assumed are proper items of expense in a business of this character. If such items were included, it might well be that the total operating expense of \$4.417 would be increased to more than \$5.00 per annum and there might be contingent expenses which would still further increase this total. It should also be noted that nothing has been included to cover a return on the investment.

Throughout the State of New York, the New York Telephone Company, a subsidiary of the American Telephone and Telegraph Company commonly known as the Bell system, charges a minimum of 50 cents per month for extension 'phone service. An investigation which was made by the Commission also shows that this is the minimum rate charged throughout the country by Bell companies for this kind of service, and in some stations, the charges for this

service in residences are as high as \$1.00 per month and in offices, \$1.50 per month. This same schedule of charges is also made by many other companies throughout the United States which are not associated with the American Telephone and Telegraph Company. In many states where the telephone companies are regulated by Commissions, the question of these rates has been passed upon from time to time, and in no instance has it been decided that it was unreasonable for the telephone company to charge 50 cents per month for extension 'phone service similar to that which is the subject of the present complaint. If the various state authorities having jurisdiction over telephone rates had failed to reach the conclusion that it was essential for the public as well as the companies to have a fairly uniform rate established for this kind of service, it would result in endless confusion and expense and the question of the charges made for this kind of service would have to be fought out in every community where a telephone system was in operation.

In the brief which the complainant filed with the Commission, he does not admit that the figures presented by the telephone company are correct, but assuming for the purpose of argument that they are correct, he claims that the rental for an extension 'phone per annum ought not to exceed \$3.964 where the annual main station rental is \$18.00 per year and \$3.514 where the annual rental of the main station is \$15.00 per year. Following out this line of reasoning, the subscriber would pay \$4.26 for an extension 'phone where the annual main station rental was \$20.00 per annum; \$5.01 where the main station rental was \$25.00 per annum; \$5.76 where such rental was \$30.00 per annum; and \$7.26 where it was \$40.00 per annum. It must be apparent that this is a complicated method of arriving at the rental charge.

An extension 'phone in Granville offers to the subscriber most extensive facilities. It enables him to communicate by telephone with people all over the country. It is entirely different from the situation which might be presented if the

Granville station had no connection with the outside world and the service was confined exclusively to the village of Granville. The accommodation afforded by an extension 'phone cannot be exactly measured in dollars and cents. It enables a person to telephone from that portion of his residence where the extension 'phone may be installed without going to the main station in the residence; it is available in many emergencies where time is of great importance; it enables two people in the residence to make use of the telephone at practically one and the same time, which would be impossible without an extension 'phone, and this extension service provides facilities which would be difficult, if not impossible, to obtain in any other way. Taking all these things into consideration, it would seem as though the service rendered by the telephone company and which is complained of in the present case is well worth the moderate charge of 50 cents per month. No evidence was introduced by the complainant to in any way substantiate his complaint, he apparently having been satisfied to rely upon the testimony which he developed by cross-examining the witnesses of the telephone company. Under the circumstances, therefore, the complainant having failed to convince the Commission that the charge of 50 cents per month made by the respondent for extension telephone service in the village of Granville was unjust or unreasonable, the complaint should be dismissed and an order to that effect entered forthwith.

ORDER.

The petition in the above entitled matter having been duly presented to the Commission on October 28, 1911, and an answer having been filed by the respondent on November 25, 1911, and public hearings having been held by the Commission on October 9, 1912, and on March 11, 1913, at which time the complainant appeared in person and the respondent by Howard Hendrickson of Albany, N. Y., its counsel, and the New York Telephone Company, having been permitted to intervene, and having been represented

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by John L. Swayze of New York City, its general counsel; and it appearing that the respondent was owned or controlled by the American Telephone and Telegraph Company or one of its subsidiaries; and that the charge of 50 cents per month for an extension 'phone connected with the system of the respondent in the village of Granville, New York, was not unjust or unreasonable for the service rendered,

It is ordered, That the complaint herein be, and the same hereby is, dismissed and the case closed upon the records of this Commission.

Dated June 9, 1915.

OHIO.

Public Utilities Commission.

IN THE MATTER OF THE PURCHASE OF THE FARMERS TELEPHONE COMPANY OF WEST JEFFERSON AND THE WEST JEFFERSON TELEPHONE COMPANY BY THE WEST JEFFERSON HOME TELEPHONE COMPANY.

No. 498.

Decided June 16, 1915.

Merger of Competing Companies Authorized.

ORDER.

The Farmers Telephone Company, of West Jefferson; The West Jefferson Telephone Company, and The West Jefferson Home Telephone Company, corporations duly organized and existing under the laws of the State of Ohio, having, on the seventh day of May, 1915, filed their joint application asking for the consent to and approval, by The Public Utilities Commission of Ohio, of the sale, by said The Farmers Telephone Company, of West Jefferson, and said The West Jefferson Telephone Company, of all their respective properties and assets to, and the purchase and acquisition thereof by, said The West Jefferson Home Telephone Company, and the time for hearing said matter having been fixed for Tuesday, May 11, 1915, at 1.30 o'clock P. M., and due notice of the time and place of said hearing having been given, and having been heard on said day and the further consideration thereof continued from day to day, the same came on this day for final consideration.

After considering the pleadings, hearing the evidence and examining the exhibits, and being fully advised in the premises, and it appearing that the service furnished the public will be improved thereby, and that the public will be

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furnished adequate service for a reasonable and just rate, rental, toll or charge therefor, the Commission is satisfied that the prayer of said application should be granted.

It is, therefore, ordered, That said The Farmers Telephone Company, of West Jefferson, be, and it hereby is, authorized to sell and convey to said The West Jefferson Home Telephone Company, all of its property and assets other than cash and accounts receivable; that said The West Jefferson Telephone Company be, and it hereby is, authorized to sell and convey to said The West Jefferson Home Telephone Company, all of its property and assets other than cash and accounts receivable, and that said The West Jefferson Home Telephone Company be, and it hereby is, authorized to purchase and acquire said properties and assets, and pay therefor the agreed considerations of \$11,488.16 and \$9,969.20, respectively, in the capital stock of said The West Jefferson Home Telephone Company.

It is further ordered, That nothing herein shall be construed to be the consent and approval by The Public Utilities Commission of Ohio to any increase in the rates nor diminution of service of said companies whose properties are hereby authorized to be sold.

It is further ordered, That said The Farmers Telephone Company, of West Jefferson, and said The West Jefferson Telephone Company make verified report to this Commission of the receipt of the consideration for their respective properties, and of the distribution of such capital stock of The West Jefferson Home Telephone Company, detailing the name and address of each individual stockholder to whom the same is transferred and the principal amount of such capital stock so transferred to each stockholder.

It is further ordered, That said The Farmers Telephone Company, of West Jefferson; The West Jefferson Telephone Company, and The West Jefferson Home Telephone Company forthwith file schedules with this Commission providing for their respective withdrawal from and inaugu-

ration of service in the territory now served by said properties, and that the authority herein granted may be exercised from and after the date of the filing of such schedules with this Commission.

It is further ordered, That, upon the consummation of the transfer of such property, all the outstanding capital stock of said The Farmers Telephone Company, of West Jefferson, and The West Jefferson Telephone Company be canceled.

It is further ordered, That nothing herein shall be considered as a finding by the Commission of the value of the property herein authorized to be purchased and sold, as an acquiescence in the values placed upon said property by said parties, nor as an approval of the considerations stipulated; nor shall anything herein be construed as an approval by the Commission of the rates now charged for service by said companies at any of their stations, or in any municipality, or elsewhere, nor as a finding by the Commission that said rates are reasonable and not excessive and not discriminatory, or that the service of said companies at any of their stations, or in any municipality, or elsewhere, is adequate, efficient or sufficient.

Dated at Columbus, Ohio, this sixteenth day of June, 1915.

COMPLAINT OF THE STILLWATER TELEPHONE COMPANY AS TO
THE ALLEGED VIOLATION OF ITS CONTRACT RIGHTS BY
THE CENTRAL DISTRICT TELEPHONE COMPANY.

Dated June 29, 1915.

Commission without Jurisdiction over Contracts Relative to Division of
Territory by Telephone Companies.

* * * * *

About six years ago we purchased of the C. D. & P. Telephone Company, 38 miles metallic circuit and 62 telephones, together with territory designated by boundary

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lines on map which we now have. We established an exchange here at Stillwater and at Deersville.

Now, we understand, The Central District Telephone Company, successor to the C. D. & P. Telephone Company, is now connecting up other companies operating in our territory, which is in violation to our contract with them altogether, as it was to be exclusive of any connection with them except through The Stillwater Telephone Company.*

* * * * *

Your favor of June twenty-eighth received.

In answer thereto, the Commission desires to state that it does not recognize any division of territory by telephone companies. For this reason, as well as the further reason that your complaint is one that goes purely to private contract, we can not be of any assistance to you in this matter.†

*Letter of The Stillwater Telephone Company to the Public Utilities Commission. June 28, 1915.

†Letter of the Public Utilities Commission to The Stillwater Telephone Company. June 29, 1915.

OREGON.

Railroad Commission.

IN THE MATTER OF THE APPLICATION OF THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY, FOR AUTHORITY TO DISCONTINUE RATES.

U-F-134.

Decided May 22, 1915.

Authorization by Commission Not Necessary to Discontinue Rates Put into Effect After Passage of Public Utility Law.

ORDER.

WHEREAS the above entitled matter came on for final determination before the Railroad Commission of Oregon on this twenty-second day of May, 1915, at the office of the Commission, Salem, Oregon, and it appearing to the Commission that the rates involved were put into effect at Flanagan after the Public Utility Law of the State of Oregon was adopted, hence no authority to discontinue is necessary, other than filing tariff giving timely notice.

*It is, therefore, ordered, That application of defendant be, and the same is hereby, dismissed.**

Dated at Salem, Oregon, this twenty-second day of May, 1915.

*A similar order was made *In the Matter of the Application of The Pacific Telephone and Telegraph Company for Authority to Discontinue Rates.* U-F-135. *Decided May 22, 1915.*

WASHINGTON.

The Public Service Commission.

STATE OF WASHINGTON *ex rel.* RICHMOND BEACH TELEPHONE
AND POWER COMPANY *v.* THE PUBLIC SERVICE COMMISSION
OF WASHINGTON *et al.*

Commission's Order Suspended.

On June 10, 1915, the Superior Court for Thurston County suspended the order of the Commission (See Commission Leaflet No. 43, p. 516) in the case entitled *The Public Service Commission of Washington ex rel. B. Wieman v. Richmond Beach Telephone and Power Company.*

WISCONSIN.

Railroad Commission.

**IN THE MATTER OF THE PROPOSED EXTENSION OF THE LINES
OF THE MARATHON CITY TELEPHONE COMPANY IN THE
TOWN OF CASSEL, MARATHON, WISCONSIN.**

U-433.

Decided June 2, 1915.

**Extension of Line Parallel to Existing Line of Another Company Not
Allowed.**

OPINION AND DECISION.

The Marathon City Telephone Company served notice on the Commission on May 10, 1915, of a proposed extension in the town of Cassel, Marathon County, Wisconsin. The Edgar, Cassel and Emmett Telephone Company, which operates for local service in that town, filed its objection to the extension. It thus became necessary to set the matter for hearing and a hearing was held at Marathon City on May 28, 1915.

Mr. F. X. Schilling and *Phillip J. Ritger* appeared for the Marathon City Telephone Company and *William Rifelman* and *A. J. Cherney* for the Edgar, Cassel and Emmett Telephone Company.

It developed that the Edgar, Cassel and Emmett Telephone Company has lines extending south and east from the village of Edgar and giving service to the farming community in that region. The Marathon City Telephone Company extends south and west from Marathon City and the lines of the two companies approach one another in the town of Cassel. The lines of both companies reach to the southwest corner of Section 23, the Edgar, Cassel and Emmett Telephone Company extending thence south-

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ward a couple of miles. The Marathon City Telephone Company wishes to extend from this corner south a distance of slightly more than half a mile to reach the residence of one individual who has applied to them for service, thus paralleling the lines of the Edgar, Cassel and Emmett Telephone Company. While a limited amount of paralleling may be permissible in instances in which there is a marked public demand for the extension of the lines of the second company, it is so apt to result in difficulties for both companies that it is not generally sound policy to allow it. In the instant case the Marathon City Telephone Company wishes to extend merely to give service to one subscriber. This prospective subscriber was present at the hearing and testified that he did not care to take the service of the Edgar, Cassel and Emmett Telephone Company. The basis for his asserted preference was that he did most of his trading in Marathon City and had relatives living there. When closely questioned as to the relatives with whom he desired to communicate, it was found that he had as frequent occasion to use the lines of the Edgar, Cassel and Emmett Telephone Company to communicate with relatives as he had to use the lines of the Marathon City Telephone Company. It is true that his residence is slightly nearer to Marathon City than it is to Edgar. However, testimony was given to the effect that he transacted considerable business in the city of Edgar. It would seem, therefore, that the public convenience and necessity, the existence of which it was sought to prove as a justification for the construction of this extension, is, in fact, very slight. Indeed, it seems doubtful if the existence of a public convenience and necessity such as would warrant granting permission to extend the lines of a telephone company parallel to existing lines of another company, can ever be predicated upon the application of a single subscriber.

The likelihood of serious disagreement arising between the two companies if permission be granted for the paralleling considered in connection with the slight occasion for the extension makes it seem unwise as a matter of policy

to allow it to be made. The Commission must, therefore, find and declare that public convenience and necessity does not warrant the proposed extension.

Dated at Madison, Wisconsin, this second day of June, A. D. 1915.

IN THE MATTER OF THE APPLICATION OF THE ETTRICK TELEPHONE COMPANY FOR AUTHORITY TO INCREASE RATES.

U-434.

Decided June 9, 1915.

Discrimination in Favor of Stockholders and Subscribers Owning Telephones Prohibited — Relation of Stockholding Subscribers to Company Discussed — Increase in Rates and Discount for Prompt Payment Recommended.

Petitioner sought authority to continue its present stockholder rate of \$8.00 per year with \$1.00 discount if payment be made during the first quarter, and to establish a non-stockholder rate of \$12.00 per year with \$1.00 discount for payment in advance during the first quarter, payment for the first year's service to be strictly in advance.

The Commission discussed at length the relation of stockholding subscribers to the company.

Held: That a distinction in rates between stockholders and non-stockholders is illegal, and therefore the application must be dismissed;

That no discrimination in rates can be based either on ownership of stock or ownership of part of the equipment;

That if the petitioner would file a rate of \$12.00 per telephone per year for both stockholders and non-stockholders, with a discount of \$1.00 in cases where payment is made within the first quarter, such rate would be approved by the Commission.

OPINION AND DECISION.

The petitioner in this matter is a telephone utility operating a telephone system in and around Ettrick, Wisconsin. Petition filed under date of April 19, 1915, shows that the lawful rates of the applicant now in effect are as follows: \$8.00 per year, with \$1.00 discount if payments are made during the first quarter of the year. The petition sets forth that up to the present time the Ettrick Telephone Com-

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pany has been strictly mutual, that is, telephone service has been rendered only to stockholders of the company, but that at present it has a number of applications for telephones from parties who do not wish to become stockholders, that stockholders have been required to invest \$40.00 for a share of stock, including one telephone, and that the company is on a non-dividend basis. Authority is therefore asked to continue the present rate to stockholders and to put in a rate to non-stockholders of \$12.00 per year, with \$1.00 discount for payments in advance during the first quarter of the year, with the payment for the first year's service to be strictly in advance. Authority is also asked to charge a reasonable installing fee when service is installed for less than one year.

Hearing was set for May 14, 1915, but no appearance was entered.

We are unable to reconcile one of the statements in the application with the facts as indicated by the rate schedules on file with the Commission. This is the statement that up to the present time non-stockholders have not been furnished service. The rate schedule of the company in its original form carried a rate for non-stockholders as distinct from the charge made to stockholders. In a decision issued May 23, 1908, authorizing the Ettrick Telephone Company to increase its annual rate from \$3.00 to \$4.00 no definite decision was rendered regarding charges to non-stockholders, as the Commission's decision* *In re Free and Reduced Rate Telephone Service* was then pending. On April 29, 1914, the Ettrick Telephone Company was authorized† to increase its rate to \$7.00 per year with a penalty of \$1.00 for failure to pay within the first quarter. In the decision† issued on that date, the Commission called attention to the illegality of a distinction in rates or charges between stockholders and non-stockholders. The application in this case, therefore, is virtually an applica-

*See I Commission Telephone Case 31, 2 W. R. C. R. 521.

†See Commission Leaflet No. 31, p. 153.

tion for the Commission to authorize the Ettrick Telephone Company to charge an illegal rate.

In dismissing this application in the form in which it has been presented to the Commission, we should perhaps draw attention again to the proper method of handling such situations as this. The Public Utilities Law is very specific in its requirement that no discrimination can be made based either on the ownership of stock in the utility concerned or on the ownership of part of the equipment used to furnish the service. Where consumers furnish part of the equipment utilities are authorized to pay them a reasonable rental for such equipment as is furnished by consumers which is ordinarily furnished by the utility, or which the law contemplates should be furnished by the utility. The term "reasonable rental" would seem to mean that the rental to be paid to consumers should not be more than a fair payment for the use of the consumer's equipment by the company. Where the company furnishes all equipment to both stockholders and non-stockholders, or regardless of whether the company furnishes equipment in all cases or not, the law forbids a discrimination between stockholders and non-stockholders. If a stockholder has furnished part of the equipment and a non-stockholder has not furnished part of the equipment, the company can pay a reasonable rental to the stockholder for the use of equipment furnished by him, but this rental is paid because he furnishes the equipment and not because he is a stockholder. In short, such a rental, if paid at all, must be paid alike to stockholders and non-stockholders if similar equipment is furnished by both.

The fact that a stockholder has purchased a share of stock in the company, however, does not authorize the utility to supply him at a lower rate than non-stockholders are supplied. In purchasing a share of stock in the company the stockholder receives the right to share in the net earnings of that company if there are any. He does not, however, receive the right to receive service from that company at a less rate than service is furnished to parties

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who have not purchased stock. In other words, there must be no confusion between the relations which exist between the individual and the company because of the fact that the individual owns part of the company's stock and the relations which exist between them because the individual is a patron of the company. The same service is furnished by the company to the non-stockholder and to the stockholder. Their relations to the company as far as concerns the matter of service rendered and paid for should be identical. The non-stockholder, of course, bears no such relation to the company as the stockholder bears because of his ownership of stock, and consequently the non-stockholder is not entitled to share in the profits of the business.

This, of course, raises the question of what method should be followed to secure equity in dealing with both stockholders and non-stockholders, in the matter of service. Many of the telephone companies in this State were originally organized primarily to furnish service to stockholders. With the development of the telephone business, however, the public nature of this business has become more fully recognized, and companies which originally were strictly mutual have found themselves under obligation to furnish service to the public without discrimination. As long as only stockholders were served, it made little or no difference in the long run whether the definite annual rates were large enough to meet the expenses of the company and pay a fair return on the investment or not. As soon as the public nature of the business resulted in the furnishing of service to non-stockholders, however, the matter of annual rates became one of vital importance to those in whom the ownership of the company vested. If rates were less than the cost of conducting the business, including in this amount the cost of securing the use of the capital invested, the loss incurred in serving all patrons, including both stockholders and non-stockholders, must, of course, fall upon the stockholders who had invested their money in the business. The result has been a more or less natural conclusion on the part of the owners of these companies

that non-stockholders should be charged more than stockholders are charged, and if the law permitted such a procedure it would not be impossible to fix the level of rates which the company ought to charge to all patrons in order to cover all expenses of the business and then provide a reasonable reduction from this level for those who had their money invested in the business. This reasonable reduction, of course, would be equivalent to the fair return which stockholders ought to be entitled to earn upon the value of their holdings.

The law, however, does not permit this course to be followed. All patrons must be charged the same rate and the distribution of profits to stockholders must be determined by the condition of the utility resulting from its operations during the fiscal period under consideration. In the long run, it should make no difference to stockholders whether they pay in the first instance a somewhat lower rate than is paid by non-stockholders or whether they pay the same rate and receive in the form of dividends a share in the profits of the business.

In practical operation, of course, there will probably be a tendency in the case of a growing business to retain these profits in the business for the purpose of making extensions and improvements so that there may not be an actual dividend payment in all instances. However, the retention of these profits in the business increases the value of stock holdings and consequently results in the stockholders' receiving a return on their capital in the form of increased worth of their investments instead of in the form of a cash distribution of profits. The fact that a company has not been on a dividend paying basis means that some readjustment must be made if equitable relations as regards stockholders and non-stockholders are to be established. It is unfair that non-stockholders should receive service without paying the full cost of that service under normal conditions. To do this and comply with the law the company should establish a rate for all parties concerned sufficient to meet its full expenses, including a fair return

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upon the value of the property. With a rate fixed at this point, there will be nothing to prevent the corporation from distributing in the form of dividends the amount available for return upon the investment, which is the greatest amount by which it would be reasonable to discriminate in favor of stockholders in the absence of a statutory provision forbidding such discrimination. If the company does not pay a dividend, but instead retains the money for improvements or extensions, it does so because it considers that a more satisfactory method of financing improvements and extensions than the borrowing of money to handle such extensions would be.

Under the provisions of the Stock and Bond Law of this State money may be borrowed to finance actual extensions chargeable to the capital account, or additional stock may be sold to secure the money for such purposes. There is, therefore, nothing in the law to prevent the stockholders of a telephone company from sharing in the profits of the business by receiving actual dividend payments, assuming, of course, that the rate to all parties has been fixed at what under normal conditions would be a reasonable point; that is, a point at which the rate will produce enough to cover operation expenses, expenses of current maintenance, expenses of proper provisions for depreciation, and the expense of the use of the capital which has come into the business and is represented in its property. If the company chooses to finance extensions and improvements by foregoing dividend payments, that is a matter for which no one but those who own the stock of the company can be held responsible. Consequently, if stockholders under normal conditions fail to receive in the form of dividends the full amount to which their ownership of stock might entitle them or an amount equal to the greatest discrimination which might reasonably be made in their favor, they have none but themselves to hold responsible. Of course, if conditions are such that the company is unable to earn a fair return on its property with rates at a reasonable point, stockholders cannot secure a full return upon their in-

vestment, but neither could they do so in the long run by any method of discrimination in rates between stockholders and non-stockholders.

This brings us to the question of the disposition to be made of the case now before us. The application in the form in which it now stands must be dismissed, but the dismissal of this case will not permanently satisfy the needs of the situation. If the Ettrick Telephone Company is to continue to furnish service and is to furnish service of a satisfactory grade and comply with the law regarding discriminations, rates to all parties will have to be increased or the losses resulting from the failure of the company to charge a proper rate will have to be borne by the stockholders. An analysis of the financial reports of the company and the knowledge which the Commission has gained of this company's operations from a number of other cases which have been before it, in two of which the company was authorized to increase its rates, leads us to conclude that the company ought to charge a rate of not less than \$11.00 net, or \$12.00 when payment is not made within the first quarter of the year, to both stockholders and non-stockholders. We do not know at present whether the company will see fit to adopt this suggestion or not, but we see no objection to recommending such a policy, in view of the unquestioned necessity for increased revenue to meet the needs of the company and prevent stockholders from being burdened with the loss incurred in meeting the obligation of the utility to furnish service to non-stockholders at its regular rate schedule. If, therefore, the company chooses to file with the Commission a rate of \$12.00 per telephone per year, with a discount of \$1.00 in cases where payment is made within the first quarter, applicable to stockholders and non-stockholders alike, such rate will be approved by the Commission. The case is therefore dismissed.

Dated at Madison, Wisconsin, this ninth day of June, 1915.

IN THE MATTER OF THE APPLICATION OF THE PIGEON VALLEY
FARMERS TELEPHONE COMPANY FOR AUTHORITY TO IN-
CREASE RATES.

U-435.

Decided June 9, 1915.

**Discrimination in Favor of Stockholders Eliminated — Increase in Rates
Authorized — 14 Per Cent. on Cost of Plant Allowed for Reserve
for Depreciation and Rate of Return in Computing Expenses.**

OPINION AND DECISION.

This is an application filed April 1, 1915, by the Pigeon Valley Farmers Telephone Company, a public utility engaged in the management and operation of a telephone system in Pigeon Falls, Wisconsin, and vicinity, seeking authority to increase its rates for telephone service. According to the application, the company has been charging \$6.75 per year for service to stockholders and \$8.00 per year for service to other parties. The applicant seeks authority to put in a rate of \$12.00 for stockholders and non-stockholders alike.

Hearing was set for May 12, 1915, but no appearances were entered.

An examination of the reports filed by the applicant discloses only a part of the information which would be necessary to enable us to make a full statement of its cost of furnishing service, were it not for the facts which we have been able to obtain regarding other telephone utilities somewhat similar. For the 18-month period ended December 31, 1914, the reported revenues were \$1,484.84 which amount checks very closely with our estimate of the probable revenues, obtained by the application of the scheduled rates to the average number of patrons served during the period. Expenses as reported were \$1,391.35, or about \$10.00 per telephone for 18 months, which seems to be a reasonable amount.

The cost of plant reported was \$5,600, but this seems to be obtained by deducting from the par value of all stock authorized the par value of that portion of the stock which

is held in the treasury. For a company to furnish satisfactory service to 144 subscribers, the number connected on December 31, 1914, however, an investment of \$5,600 is not considered excessive. The company is under obligations to furnish service of a standard prescribed by this Commission and must have its property in condition to furnish such service. Depreciation and interest on an investment of \$5,600 for 18 months would be about \$1,176, which would make the total expenses \$2,567.35. Revenues from the average number of subscribers connected during the last reporting period at a \$12.00 rate would have been about \$2,680.

For service of the standard fixed by the Commission's general service order, the rate asked for is not excessive. The company, of course, will be expected to comply fully with that order.

It is, therefore, ordered, That the applicant, the Pigeon Valley Farmers' Telephone Company, be, and hereby is, authorized to discontinue its present rates for telephone service and to substitute therefor a rate of \$12.00 per subscriber per year, applicable to all patrons.

Dated at Madison, Wisconsin, this ninth day of June, 1915.

WILLIAM ANDERSON *et al.* v. PIERCE COUNTY TELEPHONE COMPANY.

U — 436.

Decided June 9, 1915.

Reduction in Rates Refused Where Present Rates Yield Only Reasonable Amount for Operating Expenses, Reserve For Depreciation and Return on Investment.

Complaint was made that the present rate of \$15.00 per year for rural service was unreasonably high and should be reduced to \$12.00 per year. The \$15.00 rate entitled rural subscribers to unlimited service over the Pierce County system, and wherever connections with other lines were made on any basis other than a toll basis, rural subscribers of the Pierce County system had the use of said connecting lines also.

The Commission considered the quality of service rendered, the cost of plant and equipment, the investment per subscriber, total operating revenues and expenses, operating expenses per subscriber and reserve for depreciation.

Held: That the present rates are not excessive as the utility is earning just about a reasonable amount for operating expenses, reserve for depreciation and return on investment, but in return for said rates the company should furnish a high standard of service, should make its lines completely metallic and should reduce the number of subscribers to the standard fixed by the Commission's service rules.

**Allowance of 6 2/3 Per Cent. per Year as Reserve for Depreciation
Not Unreasonable.**

Held: That an allowance of 10 per cent. for reserve for depreciation for a period of 18 months is not unreasonable.

**Allowance of 7 Per Cent. per Year as Rate of Return Not
Unreasonable.**

Held: That although an allowance of 7 per cent. per year is a fully adequate allowance for interest, the fact that the company is earning 7 per cent. upon its investment cannot be held to be evidence that rates are unreasonable or extortionate.

Comparison with Rates in Other Localities Made.

Complainants contended that the defendant's rates were high as compared with the rates of other companies for similar service.

Held: That although rates lower than those of the Pierce County company are in effect in many places for rural service on metallic lines, the Commission has not found an instance where unlimited service is furnished to rural subscribers over a large system and where the lines are metallic and the number of subscribers properly limited, where a rate much, if any, less than \$15.00 per year would permanently suffice to meet operating expenses, provide a reasonable amount to meet deferred maintenance or depreciation charges, and pay a fair return upon the capital invested.

OPINION AND DECISION.

This is a complaint by subscribers of the Pierce County Telephone Company, alleging that the present rate of \$15.00 per year is higher than it should be, and asking for a reduction to \$12.00 per year.

Hearing was held March 18, 1915, in the office of the Commission at Madison. *William Anderson* appeared for petitioners and *F. M. White* and *Wellesley Vannatta* for the Pierce County Telephone Company.

The Pierce County Telephone Company is a public utility engaged in the operation of telephone exchanges at Spring Valley, Roberts, Ellsworth and River Falls, Wisconsin. At the time of the hearing, it developed that the only objection offered by petitioners had to do with the rate on rural lines, and that it was not intended to bring the matter of rates for local service in the cities and villages served by respondent into the case.

It appears from the reports filed by the Pierce County company that its exchange at Roberts is entirely a rural exchange, and that at Ellsworth and River Falls the company owns and operates both city and rural lines. The report for the Spring Valley exchange does not show any rural lines owned by the Pierce County company connected to that exchange. In addition to its own rural lines, the Pierce County company connects with a large number of other lines, with the connection made in some cases upon a toll basis and in other cases upon an unlimited service basis. Wherever connections are not made upon a toll basis, rural subscribers of the Pierce County Telephone Company have the use of connecting lines in addition to those of the Pierce County Telephone Company itself. The \$15.00 rate, according to the testimony introduced at the hearing, entitles rural subscribers to unlimited service over the Pierce County system. Some complaint was made at the hearing with regard to service, particularly with regard to the number of subscribers on a line, but the testimony of the secretary and manager of the Pierce County Telephone Company shows that there is not a large number of rural lines which are too heavily loaded. A few lines have more subscribers than there should be, but it was stated that two of the most heavily loaded lines were to be split as soon as the portion of the line immediately south of Ellsworth could be rebuilt. On one other case the manager testified that the company had prepared to divide a line, but that subscribers objected to the division of the line, and it had been left heavily loaded. The company, of course, will be expected to comply with the standards for telephone serv-

ice as fixed by the Commission. The reports filed by the company show that at all exchanges there are both grounded and metallic lines in use. The testimony of the manager of the company stated that practically all of the lines are metallic, but that a part of them at Roberts and Spring Valley are still grounded. He stated further that at the time of the hearing, the company was making all of its lines metallic at Ellsworth, and that practically all of them are metallic at River Falls.

It appears from the testimony that the original construction of rural lines was placed on 6-inch, 25-foot cedar poles, but that in recent construction where lines are light, 20-foot cedar poles with 4- or 5-inch top have been used. The main leads are on cross-arms and construction appears generally to be good. The cost of plant and equipment, the number of subscribers, and the investment per subscriber, as shown on the books of the company for each of its exchanges, as of December 31, 1914, were as follows:

	<i>Cost of Plant and Equipment</i>	<i>Number of Subscribers</i>	<i>Investment per Subscriber</i>
Spring Valley	\$6,854 45	97	\$70 70
River Falls	58,802 70	906	64 90
Ellsworth	34,780 86	583	59 50
Roberts	6,095 48	117	52 10

The company has not made a separate toll system report to the Commission, although for those of its subscribers who do not receive unlimited service it really has a toll system in operation. The cost of the toll system, as we understand the situation, is shown with the cost of the individual exchange systems to which the toll properties are adjacent. The average investment per subscriber appears rather high, but when consideration is given to the fact that the toll system is included, and that a rather high standard of construction appears to have been maintained, it is doubtful whether any material reduction from the company's reported figures should be made in arriving at the fair value of the property to be considered in this case.

Operating expenses of the various exchanges and the average operating expense per subscriber for those exchanges for an 18-month period ended December 31, 1914, were as follows:

	<i>Operating Expenses</i>	<i>Operating Ex- penses per Subscriber</i>
Spring Valley	\$1,755 46	\$18 20
River Falls	9,425 28	10 40
Ellsworth	5,594 96	9 60
Roberts	2,088 01	17 80

Operating expenses, as given above, do not include depreciation, nor do they include taxes accrued during the year and a half. It should be noted also that the number of subscribers over whom expenses have been pro-rated are subscribers on lines owned by the company, and that this number does not include subscribers for whom switching service is performed, although there are some of the expenses which are fairly attributable to the switching service. The total expenses of the utility, including provision for depreciation and taxes, amounted to \$24,528.09. Allowances made by the company for depreciation amounted to \$4,985.05. With plant and equipment amounting altogether to \$106,533.49, the provision made for depreciation appears to have been extremely conservative. A rate of 10 per cent. for depreciation for a period of 18 months, assuming a normal maintenance policy to have been pursued, is not usually considered excessive. A rate of 10 per cent. applied to the reported value of plant and equipment would amount to \$10,653.35 or \$5,668.30 more than the actual provision which was made for depreciation during this period. The total operating expenses, including taxes, but not including any provision for depreciation, were \$19,543.04. The total number of subscribers, exclusive of parties for whom switching service only was performed, amounted to 1,705, so that the average operating expenses per subscriber for the 18 months amounted to approximately \$11.50, which cannot be considered an abnormally high figure; in fact, it is little, if any, above the

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normal operating expense which seems to attach to telephone business of the character of that conducted by the Pierce County Telephone Company. Total operating revenues as reported were \$41,385.13. With full provision for depreciation such as should be taken into account before the rates of a utility can be held unreasonable and reduced by the Commission, the expenses for the period of 18 months prior to December 31, 1914, would have been \$30,196.39, leaving \$11,188.74 available for interest, or practically 7 per cent. per year. Although this is a fully adequate allowance for interest, the fact that the company is earning 7 per cent. upon its investment cannot be held to be evidence that rates are unreasonable or extortionate.

The company's financial condition, as reflected by the figures shown in its last report is such that it should be expected and required to furnish a good grade of service and strict compliance should be had with the decision of the Commission fixing standards of telephone service, a copy of which has been served upon the Pierce County Telephone Company. No order covering this phase of the situation is necessary in this case, but we wish to draw the attention of the company particularly to the fact that in leaving rates as they are, it will be expected that the standards of service will be strictly complied with. The company should make its lines completely metallic and reduce the number of subscribers on a line to the standard fixed by the service rules within a period of three months from the date of this order.

The only other matter which need be mentioned in connection with this case is the contention of petitioners that telephone companies in other parts of the State and in other parts of the country are furnishing good service at a lower rate than the rate charged by the respondent. In regard to this it might be said that we have had occasion to investigate the cost of service of telephone companies in a great many cases and, although it is entirely true that rates lower than those of the Pierce County Telephone Company are in effect in many places for rural service on

metallic lines, we have not found an instance where unlimited service is furnished to rural subscribers over a large system where lines are metallic and the number of subscribers properly limited where a rate much, if any, less than \$15.00 per year would permanently suffice to meet the operating expenses of the utility, provide a reasonable amount to meet deferred maintenance or depreciation charges, and pay a fair rate upon the capital invested in the business. Whatever the interests of the subscribers may be in this case in securing lower telephone rates, it must be assumed that they have an interest in securing adequate telephone service and any reduction of rates in this case must inevitably result in lowering the standard of service which the company can be expected to furnish. As matters stand at present the company can be expected and required to furnish telephone service of a very high grade and we do not believe that the interests either of the company or of the community would be served by such a reduction in the company's revenues as must inevitably prevent the utility from maintaining a proper standard of service. When this is considered in connection with the fact that the utility is now earning just about a reasonable amount for depreciation and interest it should be evident that the application should be dismissed.

This case is, therefore, dismissed.

Dated at Madison, Wisconsin, this ninth day of June, 1915.

IN THE MATTER OF THE APPLICATION OF THE FRIENDSHIP
TELEPHONE COMPANY FOR AUTHORITY TO INCREASE
RATES.

U-437.

Decided June 10, 1915.

Increase in Exchange and Rural Rates Authorized.

Applicant sought authority to increase its rates in order to provide revenues sufficient to pay interest on the investment and to set aside a depreciation fund, to cover salaries of extra employees required for 24-

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hour service, to provide for a competent manager, to change grounded to metallic circuits, to change from party to single line service and to make other changes in service beneficial to subscribers.

The Commission considered the operating expenses and revenues of the applicant under the existing schedule of rates and the probable revenues to be derived from the proposed rates. Under the proposed rates for wall telephones the total amount available for interest and reserve for depreciation would be about \$1,350 or \$1,400.

Held: That if interest and reserve for depreciation should be allowed at 7 per cent. each, the amount available for these purposes under the new rates would be fair only if the value of the property was \$10,000, that although the precise value of the property was not fixed, as \$10,000 was below either of the valuation figures submitted by the petitioner, the petition should be granted in so far as the rates for wall telephones were concerned.

Higher Rates for Desk Telephones Than for Wall Telephones Not Authorized — Charge of \$1.00 for Changing from Wall to Desk Telephones Approved.

Held: That the Commission is not inclined to favor a rate for desk telephones that is 25 cents higher than the rate for wall telephones because the amount exceeds the difference in the cost of operating and maintaining the two telephones; that the company should be protected in changing from wall telephones to desk telephones by making a nominal charge of about \$1.00.

Increase in Switching Rates Denied.

Held: That in the absence of unusual conditions not disclosed in the record, \$6.00 and \$7.00 per year are rather high for switching service and the existing rates of \$3.00 and \$5.00 should not be disturbed at present.

Rental of Equipment Authorized.

Held: All subscribers should be billed according to the schedule rates for the service rendered, but where the subscriber owns part of the equipment, the company may pay a reasonable rental therefor.

Toll Rates Approved.

Held: That as the toll rates submitted were in many cases decreases from existing charges and were in very few cases increases, the Commission would incorporate them in its decision.

Free Service Between Exchanges Authorized.

Held: That subscribers at the Adams-Friendship exchange should have free service with the Easton, White Creek, Quincy, Strong Prairie, Arkdale and Grand Marsh exchanges, but that non-subscribers should be charged the regular toll tariff.

Charge for Moving or Exchanging Telephone Authorized.

Held: That the charge for moving telephones should be \$1.00 when the change is made within the same building or \$2.00 if the change is from one building to another, provided, however, that one change per year, after the first year, shall be made free of charge;

That the charge for substituting desk telephones for wall telephones shall be \$1.00.

Charge for Extra Call Bells Authorized.

Held: That a charge of 15 cents per month should be made for an ordinary extension call bell and a charge of 25 cents per month for a loud ringing extension call gong.

Rates for Public Buildings Approved.

Held: That schools, lodges, churches and all charitable institutions should take the single line residence rates.

Installation of Pay Stations Authorized.

Held: That the company should install pay stations or private booths for the convenience of non-subscribers, and that the rate for city calls made from such booths should be 5 cents, such calls to be limited to five minutes.

OPINION AND DECISION.

The Friendship Telephone Company filed an application on March 26, 1915, praying in general that a rate and toll schedule there presented might be adopted as its legal rate schedule. The application set forth in more detail (1) that the petitioner operates a telephone system in the villages of Adams and Friendship and the adjacent territory; (2) that the present rate for all telephones is \$1.00 per month, except where a part of the equipment is owned by the subscriber; (3) that an increase in rates is necessary in order to pay interest on the investment and to set aside a depreciation fund, to cover salaries of extra employees required for 24-hour service, to provide for a competent plant manager, to change grounded to metallic circuits, to change from party to single line service and to make other changes in service benefiting the subscriber; and petitioned that (4) the following schedule of rates might be put in effect:

ADAMS AND FRIENDSHIP.

	<i>Wall 'phone per month</i>	<i>Desk 'phone per month</i>
<i>Business Telephones.</i>		
Single line	\$2 00	\$2 25
Two-party line	1 75	2 00
Extension 'phone (same building).....	50	60

<i>Residence Telephones.</i>		
Single line	1 50	1 75
Two-party line	1 25	1 50
Four-party line	1 00	1 25
Extension 'phone (same building).....	50	60

Rural Lines.

Meaning circuits beyond the corporate limits of
Adams and Friendship.

Ten-party line	1 25	1 50
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ADAMS OR FRIENDSHIP TO THE FOLLOWING POINTS.

Toll Rates.

<i>Air Line</i>		<i>Rate</i>	<i>Each</i>
<i>Distance</i>	<i>Place</i>	<i>3 minutes</i>	<i>Additional minute</i>
8 miles	Arkdale	10 cents	3 cents
7 miles	Arkdale Station	10 cents	3 cents
12 miles	Big Flats	10 cents	3 cents
10 miles	Easton	10 cents	3 cents
10 miles	Grand Marsh	10 cents	3 cents
30 miles	Kilbourn	20 cents	5 cents
20 miles	Necedah	15 cents	5 cents
20 miles	Quincy (via White Creek).....	15 cents	5 cents
12 miles	Quincy (Moshure switch).....	10 cents	3 cents
14 miles	Strong's Prairie	10 cents	3 cents
13 cents	White Creek	10 cents	3 cents
20 miles	Westfield	15 cents	5 cents

Free Service.

Subscribers at Adams-Friendship exchange to have free service with the Easton, White Creek, Quincy, Strong Prairie, Arkdale and Grand Marsh exchange. Non-subscribers to be charged the regular toll rate.

Switching Exchange.

Rate for connecting lines or connecting companies where their line connects direct with our Adams-Friendship exchange.

To connecting line where instrument and line are owned and maintained by connecting parties, the Friendship Telephone Company will extend a connecting rate of \$7.00 per year, provided that there are six or more subscribers on said connecting line, they to have the same privileges as the regular subscribers of the Friendship Telephone Company.

Where the party owns his own telephone and the Friendship Telephone Company owns the line, a rate of \$12.00 per year will apply, the same rate to also apply where subscriber owns the line and the company the telephone.

Moving Charge.

A moving charge will be made against our regular subscribers when move is desired within one year from date of installation. If the moving is from one location to another, the charge will be \$2.00. If moving is from one room to another or change in the same building, a charge of \$1.00 will be made. One move a year after the first move is allowed free.

Extra Call Bells.

Ordinary extension call bell.....	15 cents per month
Loud-ringing extension call bell.....	25 cents per month

Rates for Public Buildings.

Schools, lodges, churches and all charitable institutions shall take the single line residence rate.

Pay Stations.

The company is given the privilege of establishing pay stations or private booths, making a charge of 5 cents for city calls, such calls to be limited to five minutes.

WHITE CREEK, EASTON, BIG FLATS AND ARKDALE STATION.

The same rules and conditions apply at these exchanges as at Adams-Friendship except that all business is considered rural and the charge for connecting lines is \$6.00 per year instead of \$7.00 per year.

The toll rates based on air line distance to points on our line are to be computed as follows:

Any point under 15 miles, 10 cents for 3 minutes and 3 cents for each additional minute.

Between 15 and 25 miles, 15 cents for 3 minutes and 5 cents for each additional minute.

Same rates to apply both day and night.

In conformity to law, hearing was had in Madison on April 23, 1915, after due notice had been served on interested parties. Appearance was made by *E. F. Kileen* as

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attorney for the company. No appearances were entered against the petitioner company.

The testimony taken at the hearing showed the extent of the plant and its value according to the best knowledge of witnesses, a statement of assets and liabilities, and an explanation of the operating conditions of the company.

No valuation of the system has been made by the Commission. The petitioner in its testimony claimed a valuation of \$17,895, although the book value, as reported to the Commission in its balance sheet as of January 1, 1915, amounted to but \$12,500. As will develop later, however, the preciseness of valuation need not be an issue of the case.

A reproduction of the income account of the company is shown below:

INCOME ACCOUNT.

Friendship Telephone Company.

YEAR ENDING JANUARY 1, 1915.

Operating revenues.

Exchange telephone earnings.....	\$2,674 05
Earnings from connecting lines.....	305 94

TOTAL OPERATING REVENUES.....	\$2,979 99
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Operating expenses.

Central office expense-manual.....	\$1,135 22
Wire plant expense.....	673 83
Substation expense	552 30
Commercial expenses	184 79
General expenses	139 93
Undistributed expenses	132 90

TOTAL OF ABOVE ITEMS.....	\$2,818 97
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Depreciation	888 00
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Taxes	39 43
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TOTAL OPERATING EXPENSES.....	\$3,746 40
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Net operating deficit.....	766 41
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Non-operating revenues	11 20
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GROSS DEFICIT	\$755 21
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Deductions from gross income*.....	78 04
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NET DEFICIT	\$833 25
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Deficit beginning of year.....	4 69
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DEFICIT AT CLOSE OF YEAR.....	\$837 94
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* Interest on floating debt.

This income account shows a deficit of \$833 for the year in spite of the fact that no dividends have been declared and that the allowance for depreciation is small. That an increase in rates should be granted is evident. The company has indicated the rate schedule which it desires to install. The Commission has estimated the revenue derivable from this schedule (using the wall 'phone rates quoted) and finds that the revenue would be about \$4,250. Since the present expenses amount to \$3,813, it appears that about \$437 would then be available for interest and for additional depreciation. Some economies are probably possible in substation expense, and if these are attained the above total will be somewhat larger. Adding back the \$888 already allowed for depreciation, the total available for interest and depreciation would be from \$1,350 to \$1,400. If interest and depreciation should be allowed at 7 per cent. each, \$1,400 would equal 14 per cent. on \$10,000, which is below either of the valuation figures presented by the petitioner. It would, therefore, seem that the application of the petitioner should be granted in so far as the rates specified for wall 'phones obtain.

The company further desires to charge a rate for desk 'phones that is 25 cents per month higher than for the regular wall 'phone. The Commission is not inclined to favor this proposition because this amount exceeds the difference in the cost of operating and maintaining the two 'phones. The rates quoted for telephone service appear to be about as high as they should be and it is not considered advisable to approve an additional charge for desk 'phones. The company should be protected in the change from wall to desk 'phones by making a nominal charge of about \$1.00.

With reference to the rate for switching service, quoted by the company, it may be said that unless there are unusual conditions not disclosed in the record, \$6.00 and \$7.00 are rather high for this class of service as found in other cases before the Commission and nothing has been intro-

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duced to show that an unusual rate is required in this instance. The present rates of \$3.00 and \$5.00 applicable to this class of service will not be disturbed at this time. The Commission will leave this feature of the case open, however, in order that further hearing may not be necessary should pertinent evidence upon this point be presented by the company. In those cases where the subscriber owns a part of the equipment, the company will be authorized to pay a reasonable rental for this equipment.

The toll rates now submitted are in many cases decreases from existing charges and in very few cases do they effect an increase. Under these circumstances the Commission will incorporate them in the decision as submitted.

Other rules and regulations submitted appear to be reasonable and will be accepted by the Commission.

It is, therefore, ordered, That the petitioner, the Friendship Telephone Company, may set aside its present schedule of rates and substitute in lieu thereof the following schedule of rates:

Business and Residence Telephones.

	<i>Business</i>	<i>Residence</i>
One-party line	\$2 00 per month	\$1 50 per month
Two-party line	1 75 per month	1 25 per month
Four-party line		1 00 per month
Extension telephone	50 per month	50 per month

Rural Telephones.

Ten-party line	1 25 per month
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Toll Rates.

The following toll rates shall apply from Adams or Friendship to the points indicated:

	<i>First</i>	<i>Each additional</i>
	<i>2 minutes</i>	<i>minute</i>
Arkdale	10 cents	3 cents
Arkdale Station	10 cents	3 cents
Big Flats	10 cents	3 cents
Easton	10 cents	3 cents
Grand Marsh	10 cents	3 cents
Kilbourn	20 cents	5 cents
Necedah	15 cents	5 cents
Quincy (via White Creek).....	15 cents	5 cents
Quincy (Moshure Switch).....	10 cents	3 cents
Strong's Prairie	10 cents	3 cents
White Creek	10 cents	3 cents
Westfield	15 cents	5 cents

The toll rates from White Creek, Easton, Big Flats and Arkdale shall be computed on air line distances as follows:

	<i>First</i>	<i>Each additional</i>
<i>Air Line distance.</i>	<i>3 minutes</i>	<i>minute</i>
Up to 15 miles inclusive	10 cents	3 cents
Up to 16-25 miles inclusive.....	15 cents	5 cents
Over 25 miles.....	20 cents	5 cents

All toll rates shall apply both day and night.

Switching Rates.

The switching rates now effective shall continue in force, subject to the right of the company to present further evidence without a new hearing.

Rental of Equipment.

All subscribers shall be billed according to the above rates, but the company shall pay a reasonable rental for the use of equipment owned by the subscribers.

Free Service.

Subscribers at Adams-Friendship exchange shall have free service with the Easton, White Creek, Quincy, Strong Prairie, Arkdale and Grand Marsh exchanges. Non-subscribers shall be charged the regular toll tariff.

Moving or Exchanging Charges.

The charge for moving telephones shall be \$1.00 when the change is made within the same building or \$2.00 if the change is from building to building, provided, however, that one change per year after the first year shall be made free of charge.

The charge for exchanging wall 'phones for desk 'phones shall be \$1.00.

Extra Call Bells.

The charge for extra call bells shall be:

Ordinary extension call bell.....	15 cents per month
Loud ringing extension call gong.....	25 cents per month

Rates for Public Buildings.

Schools, lodges, churches and all charitable institutions shall take the single line residence rate.

Pay Stations.

The company may install pay stations or private booths for the convenience of non-subscribers, whom they are authorized to charge 5 cents for city calls, such calls to be limited to five minutes

Rates, rules and regulations as fixed by this order may be put in effect July 1, 1915.

Dated at Madison, Wisconsin, this tenth day of June, 1915.

IN THE MATTER OF THE PROPOSED EXTENSION OF THE LA
FARGE TELEPHONE COMPANY IN THE TOWN OF STARK,
VERNON COUNTY.

U-438.

Decided June 10, 1915.

Extension of Line Parallel to Existing Line of Another Company Denied.

The La Farge Telephone Company having filed notice of its intention to extend its line in the town of Stark, the Dell Cooperative Telephone Company filed its objection, as the proposed extension would parallel an existing line of the Dell company. The reasons assigned for the construc-

tion of the proposed extension were (1) that the service of the Dell company was poor and (2) that in accordance with a new agreement between the La Farge company and the Dell company, subscribers of the latter would be required to pay a toll charge of 10 cents on calls to La Farge where they transact practically all of their business. As these subscribers previously had free service over the lines of the La Farge company, the new arrangement would result in an increase in rates and could not be put into effect without the formal approval of the Commission.

Held: That public convenience and necessity do not warrant the proposed extension; that the Commission does not pass upon the question of whether or not the persons desiring the service of the La Farge Telephone Company are at present adequately served by the Dell company or served at a reasonable rate, since these matters must be approached by commencing a proceeding in the manner provided by law.

OPINION AND DECISION.

The La Farge Telephone Company served notice upon the Commission on May 18, 1915, of a proposed extension of its line in the town of Stark, Vernon County. Notice was also served upon the Dell Cooperative Telephone Company, which operates telephone lines in the above mentioned town, and objections to the extension being made by the latter company, a hearing was held at the city hall in the city of Viroqua on May 29, 1915. *A. E. Zimdars* appeared for the La Farge Telephone Company, and *P. D. Miller* appeared in behalf of the Dell Cooperative Telephone Company.

According to testimony submitted at the hearing the applicant operates as part of its telephone system two lines extending in a northerly direction from La Farge. The line farther to the east passes through what is known as Ham Cowan Corner and terminates at Rockton. The other line passes through Pott's Corner and terminates at a point a short distance south of Dell. A line of the Dell Cooperative Telephone Company extends northward from La Farge to Rockton and thence eastward to Valley. This line runs parallel to the line of the La Farge Telephone Company between La Farge and Rockton. Another line of the Dell Cooperative Telephone Company, appa-

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rently a branch of the La Farge-Valley line, extends westward from Ham Cowan Corner to Pott's Corner and thence northward to Dell. This line parallels the line of the La Farge Telephone Company from Pott's Corner to the point where the latter terminates south of Dell.

The applicant, the La Farge Telephone Company, proposes to extend its line from Ham Cowan Corner to Pott's Corner, a distance of approximately two miles. From the above statement it is seen that such an extension would result in the further duplication of telephone lines in this territory in that the Dell Cooperative Telephone Company already has a line extending from Ham Cowan Corner to Pott's Corner.

It appears that there are eight possible subscribers residing in the territory which would be covered by the proposed extension, six of whom are at present served by the Dell Cooperative Telephone Company. Several of these subscribers appeared at the hearing and stated that their reason for desiring to change from the Dell company to the La Farge company is that the service of the Dell company has been poor and that they will be required to pay a toll charge of 10 cents per message for talking with parties in La Farge, at which place they transact practically all of their business.

Up to the present time the Dell company and the La Farge company have been operating under an agreement by means of which the subscribers of each company were allowed the unlimited use of the other company's lines without paying any charge in addition to the regular monthly rental. This agreement appears to have become burdensome to the Dell company and it was proposed to enter into a new arrangement which would provide for a toll charge of 10 cents per message when the subscribers of one company used the lines of the other company, said charge to be paid by the subscribers. Inasmuch as such an arrangement would result in an increase in rates to subscribers, it is clear that it cannot be put into effect without

the formal approval of the Commission. It will, therefore, be necessary for the companies to continue under the old agreement until such time as it may be changed in accordance with the law.

Bearing upon the matter of service, the representatives of the Dell company stated that considerable work has been done recently in the way of repairing and altering the lines, which fact undoubtedly accounts for at least a portion of the complaints of the service. If the service is not satisfactory, complaint may be filed with the Commission in the near future asking for relief.

The situation as outlined indicated that for the present the Commission must find and declare that public convenience and necessity do not warrant the proposed extension. We are not passing upon the questions of whether or not the persons desiring service of the La Farge Telephone Company are at present adequately served by the Dell company or served at a reasonable cost. These matters must be approached by commencing a proceeding for their termination in the manner provided by law. It is possible that the difficulties, if any, of the applicants for service of the La Farge Telephone Company can be eliminated by a service or a rate investigation, or both, and the drastic method of permitting a duplication of lines to secure the service desired at the rate considered fair can be avoided. Until this has been shown to be impossible, it must be held that public convenience and necessity do not require the extension of lines of the La Farge Telephone Company in the town of Stark, Vernon County, as proposed in the notice filed with the Commission on May 18, 1915.

Dated at Madison, Wisconsin, this tenth day of June, 1915.

FARMERS COOPERATIVE TELEPHONE COMPANY OF DOYLESTOWN
v. PEOPLES TELEPHONE COMPANY OF RIO.

U-439.

Decided June 23, 1915.

Restoration of Physical Connection for Toll Service Ordered — Determination of Validity of Contract as to Interchange of Service or Enforcement of Said Contract Not Within Jurisdiction of Commission — Temporary Message Rate and Division of Interline Revenue Fixed.

Petitioner sought an order directing the respondent to restore physical connection between its line and that of the petitioner.

Petitioner and Cambria Cooperative Telephone Company had built a joint line between Doylestown and Cambria, and had interchanged service on a free service basis. The Cambria Cooperative Telephone Company subsequently transferred its interest in the line to the respondent, and the respondent refused to keep its portion of the line in proper repair. The joint line was complete with the exception of breaks caused by a storm, and could be made fit for operation at a moderate cost.

Connection between Doylestown and Cambria was possible through Pardeeville, but the service thus rendered was extremely unsatisfactory. The respondent proposed to build a metallic line between Rio and Fall River, and offered to accord the petitioner physical connection with this line at Doylestown upon terms to be fixed by the Commission; but objected to the restoration of the joint line as the portion which the respondent had purchased was intended for other purposes.

Held: That public convenience and necessity require the connection; that no irreparable injury will result; that inasmuch as a portion of the existing toll line would be rendered useless if not used as a connecting line between the two exchanges, it is reasonable to require its restoration and use.

That the Commission has no jurisdiction to determine the validity of the oral agreement made between the petitioner and the respondent's predecessor in title, nor to enforce said agreement.

That reasonable conditions and compensation must be prescribed when a physical connection is ordered, and that in the absence of traffic data upon which to base a determination of a permanent equitable rate of interchange, a temporary charge of 5 cents per call in either direction should be made, said charge to be apportioned equally between the two companies.

OPINION AND DECISION.

The petition alleges in substance that during 1913 the Farmers Cooperative Telephone Company of Doylestown entered into an agreement with the Cambria Cooperative Telephone Company for the construction and maintenance of a joint toll line between Doylestown and Cambria; that thereafter this line was built and service interchanged; that in the fall of 1914 the Cambria Cooperative Telephone Company transferred to the respondent its interest in this toll line, and that the respondent has for a long time refused to keep its portion of said line in proper repair. The Commission is, therefore, asked to require the respondent to restore physical connection and repair and maintain its portion of the toll line pursuant to the original agreement or upon such terms as the Commission after due investigation regards as just and proper.

The respondent in its answer alleges that it has purchased about two miles of the three miles of toll line formerly owned by the Cambria Cooperative Telephone Company, and that the lines of the Cambria Cooperative Telephone Company are now connected with its Cambria exchange. It further alleges that it proposes to use the pole line so acquired for carrying a six-circuit lead, and that it plans to establish metallic toll lines from Rio to Cambria and from Rio to Fall River via Doylestown. It denies that public convenience demands the maintenance of another toll line.

A hearing was held at Cambria on March 30, 1915. *J. M. Bushnell* appeared for the petitioner and *W. C. North* for the respondent.

The testimony shows that the joint line in question was constructed by the petitioner from its Doylestown exchange to a point at or near the town hall of the town of Courtland, and by the Cambria Cooperative Telephone Company from that point to the Cambria exchange. Under the oral agreement each company was to maintain the portion of the line constructed by it and messages were to be interchanged free of charge. This service was

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made use of by patrons of both companies for a number of months. In September, 1914, the Cambria Cooperative Telephone Company discontinued its Cambria exchange and connected its lines with respondent's exchange, the respondent thereafter performing the switching service. In November, 1914, the respondent purchased the two miles of the joint line immediately north of the town hall and agreed to purchase the remainder of the line north thereof if the Cambria Cooperative Telephone Company should desire to sell it. The joint line is now complete, with the exception of breaks caused by a storm, and can be made fit for operation at a very moderate cost.

The petitioning company has 25 subscribers who are the only persons served and upon whom assessments are levied to meet the needs of the company as they arise. It has now physical connection and free interchange of messages with the local companies operating in Wyocena and Pardeeville whose subscribers number, approximately, 650. The Pardeeville exchange has toll connection with respondent's Cambria exchange, but patrons of the petitioning company asserted that toll calls to Cambria via Pardeeville are extremely unsatisfactory. They also stated that they transact business in Cambria and would have frequent occasion to use the joint line if it were restored. The portion of the line owned by the petitioner cannot be used to advantage for local service, inasmuch as a local line already serves the community through which it runs. No subscribers' instruments were connected with the joint line while it was in service.

The respondent proposes to improve its toll service between Cambria, Rio and Fall River by making those lines full metallic circuits, and its president said that the company is willing to accord the petitioner physical connection with its Rio-Fall River toll line at Doylestown upon terms to be fixed by the Commission. He objected to the restoration of the joint line for the reason that the portion now owned by the respondent was purchased for other purposes, but stated that he presumed that his com-

pany would be willing to permit physical connection by means of such joint line upon terms to be fixed by the Commission.

In the light of the testimony it is the opinion of the Commission that public convenience and necessity require a physical connection between the petitioner's Doylestown exchange and the respondent's Cambria exchange, and that such connection will not result in irreparable injury to the owners or other users of the facilities nor in any substantial detriment to the service. Inasmuch as a portion of the existing joint line will be rendered useless if not utilized as a connecting line between the two central offices, it appears reasonable to require its restoration and use. Under the oral agreement between the petitioner and the Cambria Cooperative Telephone Company messages were interchanged free of charge, and the petitioner maintains that this agreement is binding upon the respondent company which has purchased a portion of the joint line and now operates the only switchboard in Cambria. The determination of the validity of such an agreement or its enforcement is not properly a function of the Commission. Under the provisions of the law reasonable conditions and compensation must be prescribed when a physical connection is ordered. There are before us no traffic data upon which to base a determination of a permanent equitable rate of interchange, and until such data can be gathered it becomes necessary to establish a temporary rate which will comply with the requirements of the law. A toll rate of 5 cents per call in either direction apportioned equally between the two companies appears to be a reasonable arrangement under the circumstances. After the connection has been restored for a sufficient period to allow the patrons of both companies to become accustomed to it, a traffic count should be made showing the number and origin of calls for several days. If on the basis of such a count either company feels that the toll rate and the apportionment of revenue herein prescribed are unreasonable, the matter will be further considered upon petition.

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It is, therefore, ordered, That the respondent, the Peoples Telephone Company of Rio, and the petitioner, the Farmers Cooperative Telephone Company of Doylestown, establish a physical connection between their respective telephone systems at a point in the town of Courtland, Columbia County, at or near the town hall, and interchange messages between patrons of their respective exchanges at Doylestown and Cambria at the rate of 5 cents per call.

It is further ordered, That the revenue derived from the interchange of messages herein ordered shall be divided equally between the petitioner and the respondent.

Thirty days is considered a reasonable time within which to establish the physical connection herein ordered.

Dated at Madison, Wisconsin, this twenty-third day of June, 1915.

IN THE MATTER OF THE APPLICATION OF THE BEAVER TELEPHONE COMPANY FOR AUTHORITY TO INCREASE ITS RATES, TOLLS AND CHARGES.

U-440.

Decided June 23, 1915.

Increase in Exchange Rates Authorized.

OPINION AND DECISION.

Application in this matter was filed with the Railroad Commission December 21, 1914. The Beaver Telephone Company is a public utility operating rural telephone lines in Clark County, Wisconsin, and connecting with the Clark County Telephone Company, by which company its switching service is performed. The application sets forth that the exchange rate of the applicant is now 65 cents per telephone per month and authority is asked to increase this rate to \$1.00 per telephone per month.

Hearing in the above entitled matter was set for January 26, 1915, at Madison, Wisconsin, but no appearances were entered.

On January 25, 1915, the Commission received a letter from the treasurer of the company stating that the income of the company was so small that it did not feel justified in going to the expense of sending a representative to attend the hearing. It was stated, however, that at a stockholders' meeting, held January 13, there was no opposition to the proposed increase in the exchange rate, and that as there are no non-stockholding subscribers, the company did not anticipate any opposition to the proposed increase.

It appears from the report filed by the applicant for the 18-months period ended December 31, 1914, that there were at the close of that period 57 rural subscribers connected to its lines. Earnings for the 18 months were reported as \$664.01 and operating expenses \$701.31. The record is not entirely clear as to whether the company has made a proper distinction between operating expenses and expenditures incurred for other than operating purposes. During the past year the system was partially reconstructed and the company found itself in debt at the end of the period. Although the fact that a debt was incurred for reconstruction purposes during a single year would not necessarily indicate that an increase of rates should be granted, it appears from the facts in this case that the proposed increase is entirely reasonable.

Of the 65 cents per month paid by each subscriber, 25 cents is paid to Clark County Telephone Company for switching service, leaving only 40 cents per month, or \$4.80 per year per subscriber to meet all other expenses of the company, including interest, depreciation, taxes, and current maintenance.

The company reports its cost of plant as of December 31, 1914, to have been \$1,431.27. Interest and depreciation, if full allowance were to be made for these items, would amount to about \$200 per year. An average revenue of \$4.80 from exchange rates from each of 57 subscribers would amount to only \$273.60 per year, so that there would be left for maintenance of lines and for taxes only about \$73.00 per year. The toll revenues of the company for

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messages passing over its lines are very small and need not be considered as a separate item in this case.

From the facts presented in this record and from the information which the Commission has gathered with regard to other companies similarly situated, we think there is no question that a rate of \$1.00 per month is reasonable. Inasmuch as all stockholders have agreed to pay such rate, or at least that no objection was raised to it at the time of the stockholders' meeting, we see no reason to require a further investigation into this matter.

It is, therefore, ordered, That the applicant, the Beaver Telephone Company, is hereby authorized to discontinue its present rate of 65 cents per month per telephone and to substitute in its stead a rate of \$1.00 per month per telephone. This rate may be made effective July 1, 1915.

Dated at Madison, Wisconsin, this twenty-third day of June, 1915.

IN THE MATTER OF THE APPLICATION OF THE CARTER AND WABENO TELEPHONE COMPANY FOR AUTHORITY TO INCREASE RATES.

U-441.

Decided June 23, 1915.

**Increase in Single Party Business and Residence Rates Authorized —
Differentiation in Rates for Individual and Party Line Service
Advised — 6½ Per Cent. on Cost of Property Held Reasonable Allowance for Reserve for Depreciation.**

OPINION AND DECISION.

The Carter and Wabeno Telephone Company filed an application for authority to increase rates on February 16, 1915. The application states that the present rates are \$1.00 per month for residence telephones and \$1.50 for business telephones, and sets forth that the revenues received from these rates are insufficient to maintain the lines and give the service required. The increase applied

for amounts to 25 cents per month, or \$3.00 per year for each class of service.

Hearing was set for April 15 and due notice given to all interested parties. No appearances were entered at that time.

The annual report submitted by the petitioner for the year ending January 1, 1915, shows that the operating revenues are \$4,427 and that the operating expenses, exclusive of depreciation or interest and profits, are \$3,075. The amount available for interest and depreciation is, therefore, \$1,352. Depreciation should be provided for at the rate of about 6½ per cent. on the cost of property of \$17,027, making an allowance of \$1,107, and leaving a balance of \$245 available for interest and profits. This balance is 1.4 per cent. of the property and plant account, which is quite clearly an inadequate rate of return.

The rates desired by the company apply to all subscribers. There are, however, a few urban party lines having two or three subscribers on each line. Some differentiation in the rate for this class of service should be made and it is accordingly suggested that the rate for such urban party line subscribers should remain unchanged. As there are but 14 such urban party line subscribers, this recommendation will not seriously affect the increase in revenues.

The increased rates desired by the company, with the exception above noted, will apply to 161 subscribers, and the ~~net~~ increase will, therefore, amount to \$483. The net amount then available for interest and profits will be \$728, or 4.3 per cent. on the property and plant account. It does not, therefore, appear that the application of the petitioner is at all unreasonable when applied to urban single party subscribers and rural subscribers, and it will be granted accordingly in so far as it concerns such subscribers.

It is, therefore, ordered, That the petitioner, the Carter and Wabeno Telephone Company, may set aside its present schedule of rates and substitute in lieu thereof the following schedule of rates:

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URBAN SERVICE.

Business telephones

Single party line.....	\$1 75 per month
Two or more party line.....	1 50 per month

Residence telephones

Single party line.....	\$1 25 per month
Two or more party line.....	1 00 per month

RURAL SERVICE.

All party lines.....	\$1 25 per month
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Dated at Madison, Wisconsin, this twenty-third day of
June, 1915.

WYOMING.

Public Service Commission.

REGULATIONS GOVERNING THE FILING AND PUBLICATION OF SCHEDULES OF RATES OF INTERSTATE PUBLIC UTILITIES, SUCH AS RAILROADS, EXPRESS COMPANIES, SLEEPING CAR COMPANIES, PRIVATE CAR LINES, TELEGRAPH AND TELEPHONE COMPANIES OR CORPORATIONS, AS PROVIDED FOR IN SECTION 36, CHAPTER 146, OF THE SESSION LAWS OF WYOMING, 1915.

General Order No. 1.

Dated May 6, 1915.

Regulations Governing the Filing of Rate Schedules of Interstate Utilities Established.

GENERAL ORDER.

Ordered, 1. That all interstate public utilities doing any business in the State of Wyoming shall file with the Public Service Commission of the State of Wyoming, as provided for in Section 36, Chapter 146 of the Session Laws of Wyoming, 1915, on or before June 15, 1915, schedules showing every individual or joint rate, classification, fare, toll, charge or other compensation for service rendered or to be rendered by any public utility, and every rule, regulation, practice, act, requirement, or privilege in any way relating to such rate, fare, toll, charge or other compensation, and any schedule or tariff or part of a schedule or tariff thereof in effect March 4, 1915, together with any changes subsequent to said date desired by utilities.

Further ordered, 2. All schedules shall bear on the title page thereof a number with the following prefix thereto:

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“Wyo. P. S. C. No.” Schedules must be numbered in consecutive serial order commencing with Number 1. Separate serial Wyo. P. S. C. numbers shall be used for different classes of tariffs and schedules.

Further ordered, 3. That all such form or forms used by such public utility on which to file their rates with this Commission, shall conform as nearly as practicable to any similar form prescribed by the Interstate Commerce Commission for the class of utility represented.

Further ordered, 4. That each schedule shall be accompanied by a letter of transmittal in duplicate, if receipt is desired, in the following form.

LETTER OF TRANSMITTAL.

(Name of Corporation or Municipality.)

Advice No. Place and Date.

To The Public Service Commission of the State of Wyoming, Cheyenne, Wyoming.

The accompanying schedule of rates issued by the above named corporation is sent you for filing in compliance with the requirements of the Public Utilities Act.

Supplement No. to Wyo. P. S. C. No.

Original Wyo. P. S. C. No.

(Name of Corporation or Municipality.)

(Signature of Officer Transmitting.)

The first transmittal to be used shall be Advice No. 1 and subsequent transmittals shall be in consecutive order.

Further ordered, 5. Failure to observe and comply with this order shall render public utilities within the State of Wyoming liable to penalties prescribed in Section 65 of the Public Utility Act.

Dated May 6, 1915.

REGULATIONS GOVERNING THE FILING AND PUBLICATION OF SCHEDULES OF RATES OF INTRASTATE PUBLIC UTILITIES, SUCH AS STREET RAILROADS, WATER, TELEPHONE, ELECTRIC LIGHT, GAS, HEAT OR POWER, OIL OR GAS PIPE LINES, OR ANY TWO OR MORE OF SUCH PUBLIC UTILITIES RENDERING JOINT SERVICE AS PROVIDED FOR IN SECTION 36, CHAPTER 146, OF THE SESSION LAWS OF WYOMING, 1915.

General Order No. 2.

Dated May 6, 1915.

Regulations Governing the Filing of Rate Schedules of Intrastate Utilities Established.

GENERAL ORDER.

Ordered, 1. That all intrastate public utilities doing any business within the State of Wyoming and subject to the jurisdiction of this Commission, shall file with the Public Service Commission of the State of Wyoming, as provided for in Section 36, Chapter 146, of the Session Laws of Wyoming, 1915, on or before June 15, 1915, schedules showing every individual or joint rate, classification, fare, toll, charge or other compensation for service rendered or to be rendered by any public utility, and every rule, regulation, practice, act, requirement or privilege, in any way relating to such act, fare, toll, charge or other compensation, and any schedule or tariff or part of a schedule or tariff thereof in effect March 4, 1915, together with any changes subsequent to said date, desired by utilities.

Further ordered, 2. That all schedules shall bear on the title page thereof a number with the following prefix thereto: "Wyo. P. S. C. No." Schedules must be numbered in a consecutive serial order, commencing with Number 1. Gas schedules and electric schedules must be issued separately and under separate "Wyo. P. S. C." series.

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Further ordered,

3. That all schedules must be printed or typewritten on hard paper of a good quality, and be of the size of 8½ by 11 inches. Typewritten carbon copies will not be accepted.

Further ordered,

4. The title page of every schedule shall show:

First: Wyo. P. S. C. number of schedule in the right hand corner and immediately thereunder the number or numbers of schedules superseded thereby, if any; for example:

“ Wyo. P. S. C. No. 2,
cancels
Wyo. P. S. C. No. 1.”

Second: The name in full of the issuing corporation or municipality with the address of the officer in charge upon whom service may be had.

Third: The territory or territories supplied. If between various points, the territory will be briefly stated.

Fourth: The date of issue.

Fifth: The date effective.

Sixth: The name, title and address of the officer by whom the schedule is issued.

Further ordered,

5. That all schedules or supplements to schedules filed with the Commission shall be accompanied by a letter of transmittal in duplicate, if receipt is desired, in the following form:

LETTER OF TRANSMITTAL.

(Name of Corporation or Municipality.)

Advice No.....

Place and Date.....

To The Public Service Commission of the State of Wyoming, Cheyenne,
Wyoming.

The accompanying schedule of rates issued by the above named corporation is sent you for filing in compliance with the requirements of the Public Utilities Act.

Supplement No..... to Wyo. P. S. C. No.....

Original Wyo. P. S. C. No.....

(Name of Corporation or Municipality.)

(Signature of Officer Transmitting.)

Further ordered,

6. That all intrastate public utilities shall file in the time before prescribed a list of their stockholders, officers and addresses, with residence and post office address of, and the amount of stock held by, each. Said list to be filed on a separate sheet than that upon which the return is made, giving the rate or schedule of the corporation.

Further ordered,

7. Failure to observe and comply with this order, shall render public utilities within the State of Wyoming liable to penalties prescribed in Section 65 of the Public Utility Act.

Dated May 6, 1915.

CANADA.

Board of Railway Commissioners.

IN THE MATTER OF THE APPLICATION OF THE CORPORATION OF THE CITY OF TORONTO, ONTARIO, FOR AN ORDER DIRECTING THE BELL TELEPHONE COMPANY OF CANADA TO FILE WITH THE BOARD TARIFFS OF TOLLS, APPLYING THE SAME TOLLS TO THE TERRITORY RECENTLY ANNEXED TO THAT PART OF THE CITY OF TORONTO FORMERLY KNOWN AS THE TOWN OF NORTH TORONTO, AS ARE NOW CHARGED WITHIN THE LIMITS OF THE COMPANY'S TORONTO EXCHANGE FOR TORONTO EXCHANGE SERVICES; THE SAID TARIFFS TO BECOME EFFECTIVE ON THE DATE TO BE FIXED BY SUCH ORDER, AND DIRECTING THE COMPANY TO CHARGE ONLY SUCH TOLLS AFTER THE SAID DATE. FILE NO. 3574.74.

Order No. 23497.

Decided April 8, 1915.

Toronto Exchange Schedule of Tolls Ordered Applied to the Territory Recently Annexed to That Part of Toronto Formerly the Town of North Toronto.

ORDER.

Upon hearing the application at the sittings of the Board held in Toronto, March 30, 1915, in the presence of counsel for the applicant and the Bell Telephone Company of Canada, and what was alleged—

It is ordered, That the Bell Telephone Company of Canada be, and it is hereby, directed to file with the Board tariffs of tolls applying the same tolls to the territory recently annexed to that part of the city of Toronto formerly known as the town of North Toronto, as are now charged within the limits of the company's Toronto exchange for Toronto exchange services; such tariffs to become effective January 1, 1916.

April 8, 1915.

IN THE MATTER OF THE APPLICATION OF THE LONDON RAILWAY COMMISSION FOR ORDERS DIRECTING THE BELL TELEPHONE COMPANY TO RAISE ITS WIRES AT POINTS WHERE THEY CROSS THE LONDON AND FORT STANLEY RAILWAY COMPANY'S TRACKS.

File No. 25542.18.

Decided April 19, 1915.

Raising of Telephone Wires Crossing Railroad Directed — Expense Thereof to be Borne by Railroad at Highway Crossings and by Telephone Company at Private Crossing.

OPINION.

The London Railway Commission has made application, in a number of cases, for orders directing the Bell Telephone Company to raise its wires at points where they cross the London and Port Stanley Railway Company's tracks. In this case, as well as in Files Nos. 25542.13, 25542.9, 25542.1, 25542.2, 25542.4, 25542.5 and 25542.3, the crossing occurs along the line of the public highway. In some other instances, the file does not show that the crossing is on a highway and it may well be that the crossing occurs over the private right of way of the railway company at the other points.

The London and Port Stanley Railway Company is changing its system of operation from steam to electricity. The electrical system the company is adopting is the overhead catenary, with the result that the present telephone construction has to be changed and the telephone wires changed at these crossings and new poles put in, so as to provide proper clearance for the new railway overhead construction.

There is no reason why orders should not be made in each case, directing the Bell Telephone Company to change its plant at the points in question, as requested. The Bell Telephone Company, however, claims that the applicant should be at the cost of this work, and relies on paragraph No. 6 of the Board's *Standard Conditions and Specifica-*

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tions for Wire Crossings. The railway company claims that its railway was constructed and in operation shortly after 1853, and was operating at the crossings in question long prior to the erection of the Bell Telephone Company's plant and equipment. The applicant states that it is senior to the Bell Telephone Company, and that, as changes which have been made are necessary for the proper operation of its line, the Bell Telephone Company should be at the cost of making the necessary change in its system.

In so far as any crossings over the actual right of way by the applicant are concerned, I am of the opinion that the London Railway Commission is correct in its submission, and that its seniority must prevail. The fee of the property crossed by the wires of the Bell Telephone Company in this instance, is in the railway, and, under the Board's practice, the right of crossing that the Board has permitted over the railway company's right of way must be subject to the reasonable exercise by the railway company of its proper rights, and as permitted by the Board.

In so far, then, as these crossings are concerned, an order will go that the work should be required, at the expense of the Bell Telephone Company. The larger number of crossings, however, consist of cases where the plant of the Bell Telephone Company is built, under the authority of the Dominion Act, along the highways, the wires crossing the railway construction along the line of the highway crossing. In this instance, so far as the record shows, the fee is in the municipality, with the right in the railway company to cross the highway with its track. When the crossing was first occupied by the Bell Telephone Company, this was the only right which the London and Port Stanley Railway Company had. It had at that time no right to cross the highway with wires, or to put any obstruction on the highway, except as authorized by the Railway Act and necessary for the purpose of carrying the railway, which was then operated by steam, over the highway.

Railway companies, under such circumstances, have no rights outside of the order of the Board, conferring the

right of crossing, which right is confined to the actual work required to be done. So that a railway company, in case an elimination of the grade crossing is considered, with a 100-foot right of way on each side of the highway and only one track authorized across the highway, would, as of right, only be entitled to a consideration of the single track. *Re Hamilton and Grand Trunk Railway Company, Kenilworth Avenue Case*, File No. 23753.

While, therefore, at these highway crossings, the track of the London and Port Stanley Railway Company is senior to the construction of the Bell Telephone Company, the new overhead work requiring the change was not authorized at the time the Bell Telephone construction took place, with the result that the railway company's new overhead work is junior to the Bell Telephone Company's construction, and the costs of all changes rendered necessary for the convenience of the new railway construction at highway crossings must, therefore, be paid by the applicant.

April 19, 1915.

PART II.

SELECTED COMMISSION ORDERS, RULINGS AND DECISIONS OF INTEREST TO TELEPHONE AND TELEGRAPH COMPANIES.

CALIFORNIA.

Railroad Commission.

GHREIST v. RAILROAD COMMISSION OF CALIFORNIA.

Commission's Order Sustained — Writ of Review Denied.

On April 15, 1915, the Supreme Court of California denied the application for a writ of review to have set aside the order of the Commission (see Commission Leaflet No. 24, p. 538) determining that public convenience and necessity required the construction by the Pacific Light and Power Company of a transmission line to and a distributing system in Newport Beach. (148 Pac. 195.)

INDIANA.

Public Service Commission.

J. M. APPLE *et al.* v. CITY OF BRAZIL, INDIANA.

No. 743.

Decided May 21, 1915.

**Schedule of Reasonable Rates Established — Valuation of Property
Made — Reproduction Cost New and Reproduction Cost Less
Depreciation Considered — Actual Cost Considered.**

Several residents and tax payers of the city of Brazil instituted this proceeding for the purpose of inquiring into the reasonableness of the rates charged by said city for water. No complaint was made as to the quality of the water furnished or the sufficiency of the same.

The Commission proceeded to make a valuation of the property of the respondent, and after considering actual cost, reproduction cost and reproduction cost less depreciation, determined that for rate making purposes the fair value of the property used and useful for the public convenience, including allowances for working capital, overhead charges and going value was \$128,383.

Cost of Paving over Mains and Services Considered.

Held: That in considering the cost of reproduction, the value of paving over mains and service connections is a proper item to be included, but not until the city has actually invested its money in this paving can the item be included in a valuation for rate making purposes;

That where pavements are cut for the purpose of making repairs, the cost must be charged to the repair account.

Allowance for Overhead Charges Made.

Held: That an allowance should be made to cover engineering, superintendence, interest during construction, contingencies, etc., in determining the fair value of the utility;

That as in this case there was little, if any, overhead expense other than interest during construction, 10 per cent. would be an adequate allowance.

**Value of Materials and Supplies Fixed — Allowance for Working Capital
Made.**

Held: That the reproduction cost of materials and supplies was \$2,529, and the present value \$1,845;

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That \$1,200 was a proper allowance for working capital, being the sum necessary to meet the running expenses of the business under careful and prudent management.

Going Value Considered.

Held: That although going value is an essential element in determining the value of a public utility, it should not be made the means for fictitiously increasing values or creating values that do not exist in fact;

That "every effort honestly put forth, every dollar properly expended and every obligation legitimately incurred in the establishment of, or the building up of, a public utility business," should be considered in fixing the valuation for rate making purposes, since a mere physical plant, no matter how perfect or how well it is adapted for the purpose for which it is intended, amounts to but little unless it has, or can obtain, a paying business, that early losses while building up the business are as much a part of the cost as is the loss of interest during construction;

That as considerable money had been spent in building up the business, and as practically no return had ever been paid upon investment and no money had been set aside for reserve for depreciation, \$5,000 should be allowed for going value.

Actual Cost Considered.

Held: That the actual cost theory of valuation is attended with many practical difficulties, that the records of the respondent are neither accurate nor complete and therefore of little help in determining fair value.

Determination of Reasonable Rates Made — Operating Expenses, Reserve for Depreciation and Rate of Return Considered.

Held: That in determining a reasonable rate, after having established a fair value, consideration must be had of operating expenses, reserve for depreciation and rate of return;

That \$10,000 would be an adequate and reasonable sum for operating expenses;

That considering the source from which the money was derived to construct the property, 6 per cent. would be a reasonable rate of return; that as reserve for depreciation, 1 per cent. would be adequate.

Apportionment of Expenses Between Municipal and Commercial Services.

Held: That as 70 per cent. of the capacity of the plant is required for fire service and 30 per cent. for all other service, and as .7 per cent. of the output charge should be apportioned to the fire service and 99.3 per cent. to other service, 70 per cent. of the interest and reserve for depreciation expenses and .7 per cent. of the operating expenses should be charged to fire service and 30 per cent. of the interest and reserve for

depreciation expenses and 99.3 per cent. of the operating expenses should be charged to other uses;

That according to this apportionment the city should pay 33 per cent. of the entire revenues and the other users should pay 67 per cent.

Apportionment Between Commercial Consumers Made.

Held: That each consumer's rate should be based on the cost of furnishing service to him, to be determined by the amount of water used as measured by a meter.

Installation of Meters Ordered.

Held: That all consumers being served on flat rates should be put immediately upon a meter basis.

Ownership of Meters by Utility Ordered.

Held: That the utility should immediately purchase all privately owned meters.

Meter Rental or Minimum Charge, but Not Both, Permissible — Minimum Charge Authorized.

Held: That there are certain charges in a water utility that are peculiarly meter charges which the utility has a just and reasonable right to collect, either in the form of a meter rental or as a minimum charge, but the utility has not the right to collect both a meter rental and a minimum charge;

That the Commission will fix a minimum charge for each size meter in use.

Reasonable Rates Fixed.

The Commission considered the amount of water used by all consumers having metered service, computed the amount paid by each consumer under the old rate and the amount to be paid under the new rates, and assuming that each consumer would use approximately the same amount of water under the new rates as under the old, established rates which would produce sufficient revenue to enable the utility to earn a sum adequate to pay operating expenses, provide for reserve for depreciation and earn a fair return.

OPINION.

This is a proceeding instituted by J. M. Apple and other residents and tax payers of the city of Brazil, Indiana, against the city of Brazil, for the purpose of inquiring into the reasonableness of rates now being charged by said city for water furnished.

* * * * *

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As the Commission views this case, the only question involved is as to what is a just, adequate and reasonable rate, or rates, to be charged for the services rendered, there being no complaint as to the quality of the water furnished or the sufficiency of the same.

In ascertaining what is a just and reasonable rate of return for the city of Brazil on its water plant, it is essential to determine the value of said property. Having determined the fair value of the property for rate making purposes, the income and necessary expenditures of the city in the water works department, present and anticipated, must be considered. The expense of operation must be justly proportioned between fire and general service.

To justly and fairly value the water utility of the city of Brazil, Indiana, we may consider the amount necessary to reproduce the plant new, its actual cost, its present value as ascertained by giving due consideration to depreciation, the earning capacity of the property, the growth of the property, its absolute monopoly of the business, the size and number of the community to be served, the desirability of the arrangement, and efficiency of the plant and its location in the city.

The property to be appraised consists of the following items:

- A. Lands.*
- B. Transmission and Distribution System.*
- C. Buildings and Miscellaneous Structures.*
- D. Plant Equipment.*
- E. General Equipment.*
- F. Paving over Mains (actually cut).
- G. Paving over services (actually cut).
- H. Material and supplies, including Distribution System supplies, Power Plant supplies, General Office supplies, Fuel and Miscellaneous supplies.

NOTE.—Addition of 10 per cent. to cover engineering, superintendence interest during construction, contingencies, etc.

• • • • •

* The Commission's discussion of the value of these items is omitted.

F. Paving Actually Cut.

The city filed exceptions and objections to the appraisal made by the Commission's staff on the items included under "*F. Paving Actually Cut*," setting forth in their exceptions and by evidence that paving over services had been cut and replaced to the reasonable value of \$957, and that pavement over mains had been cut and replaced to the reasonable value of \$92.00.

The city offered some evidence to show that the sum of \$957 had been expended in cutting and relaying pavement over services. The by-laws regulating and governing the water department of the city of Brazil, under Ordinance No. 1637, Section 36, passed November 17, 1908, reads as follows:

"Charge for tapping water mains and laying service pipes to nearest curb to water mains:

Gravel or unimproved street.....	\$7 50
Cobble stone or slag street.....	8 50
Macadamized street	10 00
Block, stone or brick street.....	12 00

These taps apply to three-quarter-inch taps only; other taps and length of service pipe will be estimated on application."

The records show 956 services connected with the distribution system of the Brazil Water Plant, and of these 956 services connected, the consumers have paid for 935. The 21 remaining services were paid for by the city.

It is the contention of the city of Brazil that the Commission's staff erred in disallowing the above estimated cost of laying mains and services in the streets which are now paved, but which the records show were not paved at the time such mains and services were laid.

We are of the opinion that paving which had not been actually cut in the laying of the pipes should not be allowed. We are of the opinion that the value of paving is a proper item in an estimate of the cost of reproduction new; but not until the city has actually invested its money in this paving can it rightfully be included in a valuation for rate making purposes.

In our judgment, no allowance should be made for the item of paving, which may be properly a part of the cost

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of reproduction new, but no part of the valuation on the basis of which rates are to be established, and for the reason that the city did not actually cut the paving in constructing its water works system.

Pavements are oftentimes cut in order to make repairs upon the mains or for the purpose of repairing services, and where this is done it must be charged to repair account and could not be charged as a part of the valuation in a rate making case. We, therefore, adopt the staff's conclusions under the item of "*F. Paving Actually Cut.*"

G. *Overhead.*

An allowance should be made to cover engineering, superintendence, interest during construction, contingencies, etc., in ascertaining the fair value of utility property.

There is no evidence to show that the construction of this water works plant required any extra engineering assistance or preliminary legal expense or contingencies of any kind. Outside of the interest expended during construction there seems to have been little, if any, of the other expense usually following work of this kind.

This Commission is of the opinion, in this case, that 10 per cent. should be added for this item.

The percentage to be computed upon the items as adopted by us, excluding any percentage upon lands, would give \$12,305, reproduction cost, and \$9,817 present value.

H. *Materials and Supplies.*

The staff appraised the materials and supplies of the city in the water works department at, cost of reproduction, \$2,529, and present value, \$1,845. There being no exceptions or objections to this item, we adopt the staff's conclusion and fix the reproduction cost of materials and supplies at \$2,529, and present value, \$1,845.

Working Capital.

This item should include cash necessary to meet the running expenses of the business under careful and prudent management. The records show that the total operating

expense for the first six months of the year 1913, bond interest excluded, and with no taxes, was \$5,088.73. The Commission is of the opinion that \$1,200 is a reasonable and sufficient amount to allow as working capital. Therefore we fix \$1,200 as the amount for working capital.

Going Value.

That going value is an essential element in determining the value of a public utility is no longer an open question. *Omaha v. Omaha Water Company*, 30 Sup. Court Reporter, 615-620.

Going value, however, cannot be made the means of fictitiously increasing values or creating values that do not, in fact, exist.

All the facts and circumstances surrounding the utility should be taken into consideration in arriving at the item of going value.

Every effort, honestly put forth, every dollar properly expended, and every obligation legitimately incurred in the establishment of, or in the building up of, a public utility business, should be taken into consideration in fixing the valuation, for rate making purposes.

The cost of developing a business of a water utility may be made up of many different kinds of expenditures. It may include the cost of advertising, soliciting, demonstrations showing the advantage of having water under pressure in the houses, of granting of lower than the regular rates, in its early life, to get people accustomed to using the services, and many other outlays of this character in order to build up the business.

A mere physical plant, no matter how perfect or how well it is adapted to the purpose for which it is intended, amounts to but little unless it has, or can obtain, a paying business. Without business it is dead property, instead of a living concern earning profits. To earn profits it must have business or customers who avail themselves of the services it renders at rates that yield an adequate income.

The Brazil Water Plant during the first ten years of its operation did not have a sufficient amount of business or

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earnings to cover operating expenses, including depreciation and a reasonable rate of interest upon the investment. During the next five years of its operation there were deficits each year.

The amount by which the earnings fail to meet these requirements may be regarded as deficits from the operation. These deficits, or a part of them, constitute the cost of building up the business of the plant. They are as much a part of the cost of building up the business as loss of interest during the construction of the plant is a part of the cost of construction.

The results of operation during the early life of the Brazil Water Plant, show that considerable money was expended in building up the business; that practically no interest has ever been paid upon the investment; that no money has been set aside for depreciation. We fix \$5,000 as going value.

Summary.

The calculations made by the Commission's staff show that the following figures are the reproduction cost and present value of the city's property in the water works department used and useful in furnishing and distributing water to the city of Brazil and the inhabitants thereof.

	<i>Reproduction Cost</i>	<i>Present Value</i>
A. Land	\$2,600	\$2,600
B. Transmission and Distribution.....	92,488	84,152
C. Buildings and Miscellaneous Structures.....	21,788	17,409
D. Plant Equipment	15,188	9,760
E. General Equipment	1,177	952
F. Paving (none)	None	None
<hr/>		
TOTAL B, C, D, E AND F.....	\$130,641	\$112,273
12 per cent. on B, C, D, E and F (See Note)	15,677	13,473
<hr/>		
	\$146,328	\$125,746
H. Materials and Supplies.....	2,529	1,845
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GRAND TOTAL	\$148,857	\$127,591

NOTE—12 per cent. allowed to cover engineering, superintendence, interest during construction, contingencies, etc.

* * * * *

Actual Cost.

The theory of actual cost is attended with many practical difficulties, for in attempting to ascertain the actual cost of most municipally owned utilities the records available on the question are neither accurate or complete.

It appears from the audit made by the Commission's accountants of the books and records of the municipal water works of the city of Brazil, that said records are neither accurate nor complete.

* * * * *

The most important problem in this case is the determination of the value of the property. It is our duty to ascertain the fair and reasonable value of the property, used and useful for the convenience of the public.

After taking into consideration, as nearly as possible, the actual cost of this property as shown by the records of the city, the cost of its reproduction new, the cost of reproduction new less depreciation, and after considering all the evidence and records in the case, it is our opinion that the fair and reasonable value of the property for rate making purposes is \$128,383.

A. Lands	\$4,600
B. Transmission and Distribution System.....	76,269
C. Buildings and Miscellaneous Structures.....	18,235
D. Plant Equipment	9,760
E. General Equipment	952
F. Paving	None
G. Materials and Supplies.....	1,845
H. Overhead	10,522
I. Working Capital	1,200
J. Going Value	5,000
TOTAL	\$128,383

We arrived at the value of this property by studying the evidence and records and applying it specifically to the report of our engineering staff.

From the estimate of the engineering staff we have made the following deductions:

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1. Services paid for by consumers.....	\$7,883
2. Excess allowances for contingencies, engineering, superintendence, interest during construction, etc.....	2,951
<hr/>	
TOTAL	\$10,834

In the appraisal made by the Commission's staff on the item known as services, the present value was estimated at 7,961, of which amount the consumers paid \$7,783, and the city paid \$178. It must be manifestly clear that the city could not capitalize the amount paid by the consumers in the construction of these services.

The estimates for preliminary expenses, engineering, contingencies and interest during construction are in excess of what should be allowed.

It is undoubtedly right to charge to capital account the reasonable and necessary expenditures of this kind. The Commission is of the opinion that 10 per cent. would be a just and reasonable charge for this item.

We have increased the valuations, as made by the staff, in the light of evidence and by the records, as follows:

1. Lands, water rights.....	\$2,000
2. Buildings and miscellaneous structures.....	825
3. Working capital	1,200
4. Going value	5,000
<hr/>	
	\$9,025

The engineering department, at the time the appraisal was made, knew nothing of the water rights which developed at the time of the hearing. The well was not complete at the time the staff left Brazil, but was completed shortly thereafter, and was inspected by the Chief Engineer of the Commission, and appraised at the value herein quoted.

The increase made by the Commission over the staff's appraisal on lands is, in a large measure, due to the evidence introduced at the hearing, and for the further reason that the records bear out the city's contention as to price paid for land. The Commission has allowed the item of working capital amounting to \$1,200.

Table No. 3* will show total operating revenue, total operating expense and net operating revenues for the years 1904 to 1914, both inclusive. It will be noted that both operating revenues and expenses are increasing.

Determining the Rate.

We have now established the fair and reasonable value of the property of the Brazil Water Works plant for rate making purposes. We must now find: 1, the operating expense; 2, a proper depreciation fund; 3, a reasonable and fair return to the city on the value of its property as above found.

The public has an absolute right to know what the cost of the service produced by their municipal water plant actually is. This is the only means by which a just and equitable rate, one that is fair both to the city and the public, can be ascertained.

The operating expenses of all public utilities are easily increased, and sometimes to the point of extravagance. We are of the opinion that an operating expense of \$10,000 would be adequate, just and reasonable for the purposes of the city of Brazil.

The rate of return on the value of the property must now be determined, and it must be a fair return on the value of the property used and useful for the convenience of the public.

San Diego Land and Town Company v. Jasper, 118 U. S. 439, 110 Fed. 702, L. ed. 892, decided in 1913, said:

"It no longer is open to dispute that under the constitution, what the company is entitled to demand, in order that it may have just compensation, is a fair return upon the reasonable value of the property at the time it is being used for the public."

A rate of return on the value of the property must be fair to the consumers and to the city. The total actual cost of this property comes from the people of the city of Brazil through taxation. Taking into consideration the source

* Omitted.

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from which the money was derived to construct this property, and not unmindful of the interest of the people as well as the city, we are of the opinion that a net return of 6 per cent. on the value of this property as herein found is sufficient.

This means that the city of Brazil shall earn 6 per cent. upon the value of its property so found, after all operating expenses have been paid and after allowing for a depreciation fund sufficient to take care of the property.

The Commission finds that provision must be made by the users of the service of this utility to provide sufficient money to pay for the following items:

Operating expense	\$10,000 00
Depreciation	1,283 83
Interest at 6 per cent.....	7,702 98
	<hr/>
	\$18,986 81

The payment of the revenues the city of Brazil must receive should be apportioned justly and fairly between the municipality and the people using the service. This is governed by the capacity and output required by the municipality and by the private users.

The water works plant of the city of Brazil has pumping machinery sufficient to maintain four one-inch streams of water thrown to a vertical height of eighty feet through two hundred feet of hose two and one-half inches in diameter, to be attached to a hydrant situated upon the line of mains of said water works plant. This would require a capacity of practically 1,000 gallons per minute for fire service.

The maximum daily consumption for other than fire service is 310,000 gallons. This would require a capacity to furnish for other than fire service 430 gallons per minute.

On this basis the required capacity of the plant would be 70 per cent. for fire service and 30 per cent. for all other service.

We have found the present value of the Brazil Water Works property to be \$128,383. The capacity apportionment would be as follows:

For fire service.....	\$89,868 10
For purposes other than fire.....	38,514 90

That is to say, of the total capacity of the plant 70 per cent. of the present value of the property was provided to furnish capacity for municipal purposes and 30 per cent. for other purposes.

We find that the output for the year ending December 30, 1914, for fire was 785,000 gallons; for domestic and industrial service the output was approximately 112,000,000.

The output charge is represented by the operating expense of the water works plant, except taxes. We found that \$10,000 is a proper operating expense. On this basis the output charge should be apportioned as follows:

For fire .....	.7 per cent.	\$70
For other than fire.....	99.3 per cent.	9,930
		<hr/> \$10,000

We have found that the revenue that must necessarily be paid is \$13,986.81 per annum. Distributing the expense, as herein explained, we have the following results:

		<i>Fire</i>	<i>Domestic</i>
Interest	\$7,702 98	\$5,392 09	\$2,310 89
Depreciation	1,283 83	898 68	385 15
Operating expense and out- put	10,000 00	70 00	9,930 00
		<hr/>	<hr/>
		\$18,986 81	\$12,626 04

This estimate will require the municipality to pay 33 per cent. of the entire revenue of the water works plant, and the domestic users 67 per cent. The per cent. the city pays will not only be for fire service but for all other uses of the water. Any plan that we may devise for the separation of the expense of maintaining the water works plant

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between the municipality and the private consumers is subject to modification. The railroads contributed during 1914 approximately \$1,884.20 to the revenues of the Brazil Water Plant. Deducting the amount paid by the railroads from the operating revenues that must be earned by the water works plant, and charging the municipality with 33 per cent. of the remainder, the amount the city would then be compelled to pay per hydrant, per year, would be \$41.80.

The next thing for us to determine is how the revenues that must be paid by those other than the municipality shall be apportioned between the different consumers.

The only just and equitable charge that any utility can make is one based on cost of service. Each and every consumer should pay what it costs the utility to deliver the service he receives.

There are 883 consumers receiving the service by meter measurements and 10 consumers receiving service at flat rate. The 10 consumers now receiving flat rate service should be immediately put on a meter basis, and we are informed that the city is arranging for these services to be metered.

Of the 883 consumers now receiving the service by meter measurement, 260 of said meters are privately owned, which meters the Brazil Water Works plant should immediately purchase from the individual owners at a fair and equitable price, as this is discriminatory under Section 113 of the Shively-Spencer Utility Commission Act.

There are certain charges in a water utility that are peculiarly meter charges, and which the utility has a just and legal right to collect, either in the way of meter rental or by a minimum charge. The Commission, however, is not ready to concede that the utility has the right to collect for both a meter rental and a minimum charge, therefore the order we make in this case will provide a minimum charge for each size meter in use.

The auditing department of this Commission has made a computation showing the number of cubic feet of water

used by all consumers having metered service. After obtaining these facts, we computed the sum paid by each consumer on the old rate as well as on the rate hereinafter ordered by this Commission. This required time, but is the only method in which results can be obtained that can be depended upon.

The earnings from the rates, herein authorized by the Commission, are based upon the assumption that the consumers will use approximately the same amount of water for the year following the taking effect of the rate that they did for the year upon which the calculations were based. If this proves approximately true, the rates that we order will produce sufficient revenue to enable the Brazil Water Works plant to earn the revenue that we have found it is necessary for said plant to earn.*

*Schedule of rates omitted.

MAINE.

Public Utilities Commission.

APPLICATION OF PENOBSCOT BAY ELECTRIC COMPANY FOR PERMISSION TO ISSUE SECURITIES.

U-30.

Decided May 25, 1915.

Issue of Bonds at 90 and Issue of Stock at Par Authorized — Issue of Stock by Existing Corporation at Less than Par Not Authorized.

Applicant sought authority to issue \$21,000 of bonds at 90 and \$9,300 of stock at 75 for the purpose of funding \$14,000 of notes, and to reimburse the treasury for money expended in the acquisition of property and for construction, extensions and improvements. It was the petitioner's intention when it made the expenditures for which it now sought to reimburse the treasury to have recourse to these bonds for the ultimate payment therefor, and provision for the same was made in the original mortgage.

Held: That under the decision in *The Black Stream Electric Company case*,* a newly organized corporation would not be permitted to issue its common stock at less than par;

That without passing upon the question whether this rule should be adhered to in all cases of the issue of stock by existing corporations, the present petitioner has made a case, on its own valuation, which negatives any demand for an exception from the rule laid down in the *Black Stream case*;

That because of the inherent difference between stocks and bonds, the Commission will authorize the issue of bonds at 90, although authorizing the issue of stock only at par.

APPEARANCES:

M. H. Blackwell, treasurer, for petitioner.

No one appeared in opposition.

OPINION AND ORDER.

Petition of Penobscot Bay Electric Company, an incorporated gas and electrical company, for permission to issue

*See Commission Leaflet No. 43, p. 570.

first mortgage, 5 per cent. bonds, payable January 1, 1929, to the amount of \$21,000 to be sold at not less than 90, and capital stock of the par value of \$9,300, to be sold at not less than \$75.00 per share of the par value of \$100. Petition filed May 10, 1915. Public notice ordered and proved. Hearing held May 18, 1915.

The Penobscot Bay Electric Company was organized under Chapter 156 of the Private and Special Laws of 1907. It now has outstanding capital stock of the par value of \$122,500 and bonds aggregating \$178,000. Of the latter \$20,000 are underlying bonds on the property of the Belfast Gas and Electric Company, now a part of petitioner's plant. The balance, \$158,000, were issued, \$122,000 at par for cash or for property on which an equivalent amount of cash had been expended, and \$36,000 at 95. Fifty-eight of these bonds, of the denomination of \$1,000 each, were issued under a stipulation in the mortgage permitting bonds to the extent only of 80 per cent. of the cash expended upon the property. So that, while the bonds aggregating \$158,000 have been sold for cash or for property representing cash to the amount in all of \$156,200, they represent total cash outlay of \$172,500. The capital stock outstanding was sold, 883 shares at par and 342 shares at 75, all for cash or for property on which an equivalent amount of cash had been expended.

The petitioner offered evidence tending to show that there had been expended upon the properties an amount substantially equivalent to the par value of its stock, bond and other liabilities, and submitted an estimate of the present value of its plant \$81,825.50 in excess of its book value. Its balance sheet shows a deficit of \$3,761.10. During the last fiscal year it charged to depreciation between \$11,000 and \$12,000. This deduction produced a book deficit for the year of \$2,466.56. The figures presented appear to indicate that the corporation has passed through its development stage and has arrived at a position where it is showing a substantial operating profit.

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The purpose of the present issue of securities is to fund promissory notes amounting to \$14,000 and to reimburse the treasury for money expended in the acquisition of property and for construction, extension and improvement of its facilities to the amount of \$12,775. Its total expenditures for such purposes during 1913 and 1914, for which these bonds were in part taken down, amounted to \$25,938.29. It appears to have been the petitioner's intention when the expenditures were made to have recourse to these bonds for the ultimate payment therefor, and provision for the same was made in the original mortgage.

This case requires further notice of the Commission's policy relative to the issue of capital stock. *In the Matter of Application of The Black Stream Electric Company,** U-25, we stated that a newly organized corporation would not be permitted to issue its common stock at less than par. While there may or may not be conditions under which this rule should not be adhered to in the issue of such stock by existing corporations, we believe that the petitioner has made a case in the present instance, on its own valuation, which negatives any demand for an exception.

There is a well defined distinction between the issue of common stock and of bonds. The former is an evidence of the relative ownership of certain individuals in an enterprise. It carries with it no promise to pay anything except a *pro rata* division of the net earnings and, in case of liquidation, of the net assets of the corporation. The certificate means to the inexperienced just what it recites on its face—that the holder has invested in the plant so much money and that the plant has been enriched to that extent. It is safer for it to mean the same thing to all persons. If a corporation is promoted for legitimate business, as this one appears to have been, nothing is gained by certifying that a person who has actually paid less than \$100 into the treasury has paid in full for a \$100-certificate. If it is promoted for stock selling purposes, such a certificate may aid in imposition upon the public.

* See Commission Leaflet No. 43, p. 570.

We believe that in the long run this policy will secure the best results.

On the other hand, a bond, like a promissory note, is a promise to pay a certain sum of money at a certain time, with interest at a fixed rate. At whatever price it is sold, the amount of the debt and the value of the owner's interest is definitely fixed. In practice it makes little difference whether its rate is 4 per cent. or 6 per cent. It is bought and sold on the basis of what it will actually earn during its life, at its fixed rate, on the money paid for it. Its price must always depend upon the current rate of money for similar investments.

Some confusion appears to have grown out of our decision on The Black Stream Electric Company's petition, due apparently to a hasty reading by its first critics and the careless pyramiding of criticisms upon errors in other criticisms. We refer to this, not for the purpose of answering gratuitous criticism, but to forestall possible misapprehension as to the policy of the Commission and to prevent the appearance of inconsistency.

It has been publicly stated that we had ruled that no corporation could sell stock or bonds at less than par. An intelligent reading of our decision will disclose the fact that no reference whatever was made to the sale of bonds in the discussion and announcement of our policy. Neither the word "bond" nor "bonds" appears anywhere in it. Both the language and reasoning are entirely inconsistent with such an idea. We did fix the minimum price at which those particular bonds should be sold at not less than par, *which was the exact prayer of the petition*, and which was specifically so stated in the decision. We had previously and have since authorized the sale of bonds at various prices below par according to the circumstances of each case.

Now, after public notice and hearing and mature consideration of the evidence, we find that the capital to be secured by the issue of said stocks and bonds is required in good faith for purposes enumerated in Section 35, Chap-

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ter 129, Public Laws of 1913, and that the issue thereof under the conditions hereinafter imposed is consistent with public policy, and

It is ordered and decreed,

1. That the Penobscot Bay Electric Company be, and it is hereby, authorized to issue its first mortgage 5 per cent. gold bonds, due January 1, 1929, to the amount of \$21,000, being bonds numbered from 159 to 178, both inclusive, in denominations of \$1,000 each, and bonds numbered 236 and 237 in denominations of \$500 each, and to sell the same at not less than 90 per cent. of their par value and accumulated interest.

2. That said company be, and it is hereby, authorized to issue and sell its common stock to the amount of \$9,300, divided into shares of the par value of \$100 each, at not less than par;

3. That said company use so much of the proceeds of said sales as may be necessary to retire its outstanding promissory notes; \$12,775, or so much as may remain from the proceeds of stocks and bonds so sold after the payment of said notes, and not exceeding said sum last named, to reimburse its treasury as prayed for in said petition; and that any excess remaining from said sales be retained in its treasury for further acquisitions, improvements and betterments to its plant, or for such other disposition as may be approved by the Commission.

4. That said company report to this Commission in detail, supported by the affidavit of one of its principal officers, its doings hereunder, within twenty days after the first day of August, 1915, and within twenty days after the first day of each alternate month thereafter until it shall have ceased to take any action hereunder.

Given under the hand and seal of the Public Utilities Commission, at Augusta, this twenty-fifth day of May, A. D. 1915.

OHIO.

The Public Utilities Commission.

IN THE MATTER OF APPEAL FROM AN ORDINANCE PASSED BY
THE CITY COUNCIL OF THE CITY OF MARYSVILLE, OHIO,
TO REGULATE THE PRICE WHICH THE MARYSVILLE LIGHT
AND WATER COMPANY MAY CHARGE FOR ELECTRIC LIGHT
IN SAID VILLAGE OF MARYSVILLE, OHIO.

No. 360.

Decided June 11, 1915.

Commission Without Jurisdiction to Determine Constitutionality of Statute.

Complaint was made that the rates to be charged by The Marysville Light and Water Company for its electrical service, as fixed by an ordinance of the council of the village, were unjust and unreasonable.

To this complaint the company interposed a demurrer alleging (1) that the Commission had no jurisdiction of the subject of the action, (2) that the statute under which this proceeding was brought was in contravention of and contrary to certain provisions of the Constitution of the State of Ohio.

Held: That if a constitutional right of the company has been infringed upon or violated or there is being exercised by the Commission power delegated to it inconsistent with the provisions of the Constitution, it is for the courts to interfere and determine the proper limits not only of the legislative power but also of the administrative power conferred by the legislature upon the Commission.

That the Commission must administer the law as it finds it, and cannot assume to question or determine the constitutionality or validity of the statute under which it operates and from which its jurisdiction is exclusively derived.

That as the statute provides a method for an appeal from an ordinance, and as the statutory method has been followed, the demurrer should be overruled.

OPINION.

A complaint, signed by thirty-eight electors of the village of Marysville, Ohio, being more than 3 per cent. of the qualified electors thereof, was filed with the Commis-

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sion, alleging that on the eighteenth day of August, 1914, the council of said village duly passed an ordinance, prescribing and fixing the rates to be charged by The Marysville Light and Water Company for its electrical service for a period of five years from the effective date of the ordinance; that the rate so fixed is unjust and unreasonable, and would allow the company to receive an excessive and unreasonable rate upon its property actually used and useful for the convenience of the public in furnishing the service.

This proceeding was instituted under favor of Section 614-44 of the General Code, which provides for an appeal from an ordinance, passed by the council of a municipality, establishing the rate to be charged by the utility for a period of not to exceed ten years. The provisions thereof are as follows:

"Any municipal corporation in which any public utility is established, may, by ordinance, at any time within one year before the expiration of any contract entered into under the provisions of Sections 3644, 3982 and 3983 of the General Code between the municipality and such public utility with respect to the rate, price, charge, toll, or rental to be made, charged, demanded, collected, or exacted, for any commodity, utility service, by such public utility, or at any other time authorized by law proceed to fix the price, rate, charge, toll, or rental that such public utility may charge, demand, exact or collect therefor for an ensuing period, as provided in Sections 3644, 3982 and 3983 of the General Code. Thereupon, the Commission, upon complaint in writing, of such public utility, or upon complaint of one per centum of the electors of such municipal corporation, which complaints shall be filed within sixty days after the passage of such ordinance, shall give thirty days' notice of the filing and pendency of such complaint to the public utility and the mayor of such municipality, of the time and place of the hearing thereof, and which shall plainly state the matters and things complained of.

"If any public utility shall have accepted any rate, price, charge, toll, or rental fixed by ordinance of such municipality, the same shall become operative, unless within sixty days after such acceptance there shall have been filed with the Commission, a complaint, signed by not less than three per centum of the qualified electors of such municipality. Upon such filing, the Commission shall forthwith give notice of the filing and pendency of such complaint to the mayor of such municipality and fix a time and place for the hearing thereof. The Commission shall, at such

time and place, proceed to hear such complaint, and may adjourn the hearing thereof from day to day.

"The filing of a complaint by a public utility, as herein provided, shall be taken and held to be the consent of such public utility to continue to furnish its product or service, and devote its property engaged therein to such public use during the term so fixed by ordinance or by the provisions of this act. Parties thereto shall be entitled to be heard, represented by counsel, and to have process to force the attendance of witnesses."

To this complaint a demurrer has been interposed by the company, setting forth two grounds:

"*First*: That the Public Utilities Commission of Ohio has no jurisdiction of the subject of the action.

"*Second*: That the statute under which this proceeding is sought to be prosecuted is in contravention of and contrary to the provisions of Section 1f, Article II, of the Constitution of the State of Ohio, as amended in 1912."

This brings us to a consideration of the powers and proper functions of the Commission in controversies of this character. As its powers and duties are derived exclusively from the law creating it, and are purely administrative in character, if a constitutional right of the defendant has been infringed upon or violated, as claimed, or there has been delegated authority, now being exercised by the Commission, inconsistent with the provisions of the Constitution, it is for the courts to interfere and determine the proper limits, not only of the legislative power, but the administrative power conferred by it upon the Commission.

While it is well settled there is nothing in the Constitution or the laws of the United States which prevents a State from creating a Commission of this character, and an express delegation of power granted to the General Assembly by Article XIII, Section 2, of our State Constitution to classify corporations and confer upon proper boards, commissions or officers supervisory and regulatory powers over the organization, business and issue and sale of stock and securities thereof, to assume to deter-

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mine the issue raised by this demurrer would lead the Commission into the domain occupied exclusively by the judicial branch of the government, and it would be exercising a power that is not and cannot be confided to it.

The Commission must administer the law as it finds it, and cannot assume to question or determine the constitutionality or validity of the statutes under which it operates and from which its jurisdiction is exclusively derived.*

Dated June 11, 1915.

*On June 11, 1915, an order overruling the demurrer was entered.

WISCONSIN.

Railroad Commission.

OSHKOSH WATERWORKS COMPANY v. RAILROAD COMMISSION OF WISCONSIN.

Commission's Order Sustained.

On June 1, 1915, the Supreme Court of Wisconsin affirmed the decision of the Circuit Court of Dane County (see Commission Leaflet No. 37, page 611), which upheld the order of the Commission (see Commission Leaflet No. 26, page 1296), fixing the compensation to be paid by the city for the property of the utility. (152 N. W. 859.)

American Telephone and Telegraph Company
Legal Department
15 Dey Street, New York, N. Y.

COMMISSION LEAFLET No. 45

Recent Commission Orders, Rulings and Decisions
from the following States:

Arizona	Nebraska
California	New Jersey
Florida	New York
Illinois	Pennsylvania
Indiana	South Carolina
Louisiana	Washington
Massachusetts	Wisconsin

and
Canada

SEPTEMBER 1, 1915

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PART I
COMMISSION ORDERS, RULINGS AND DECISIONS
DIRECTLY AFFECTING TELEPHONE AND
TELEGRAPH COMPANIES.

ARIZONA.

Corporation Commission.

TEMPE, AN INCORPORATED TOWN IN THE COUNTY OF MARI-
COPA, STATE OF ARIZONA, *v.* THE MOUNTAIN STATES
TELEPHONE AND TELEGRAPH COMPANY.

Docket No. 125.

Decided June 26, 1915.

**Commission May Change Franchise Rates and Modify Franchise Pro-
vision Relating to the Furnishing of Free Service to Municipalities.**

Complaint was made that the respondent refused to furnish service at the rates and on the conditions prescribed in a franchise granted to its predecessor, the Overland Telephone and Telegraph Company.

The town of Tempe had granted a franchise to the Overland Telephone and Telegraph Company to use the streets of Tempe for telephone purposes, and in this franchise the rates to be charged within said town were prescribed. The respondent acquired by purchase all of the property of the Overland company, including said franchise.

Subsequently the Commission had prescribed, among other rates, the rates to be charged in Tempe, and also had prescribed the conditions upon which free service might be furnished to municipalities and the extent of such service. The respondent was charging the rates prescribed by the Commission and had attempted to grant free service to Tempe in accordance with the Commission's order.

The sole contention of the complainant was that when the town of Tempe granted the franchise to the Overland company, and provided as a condition thereof that certain rates should be charged by said company and that certain free telephones should be furnished to the town during the life of the franchise as a consideration for the granting of said franchise, acceptance of said franchise by the grantee made a contract which was binding on the grantee and its successors, and which the Commission had no power to change. No complaint was made as to the reasonableness of the rates in effect.

The Commission assumed as a basis for argument that the respondent was operating under the franchise granted to the Overland Telephone and Telegraph Company.

Held: That a municipal corporation has only those powers expressly delegated to it, that no such power as would be necessary to regulate the rates of a telephone company within its borders had ever been delegated by the legislature to the town of Tempe;

That the agreement between the town and the utility providing for free service to the town was beyond the power of Tempe to make;

That despite the franchise provision, the Commission had power to prescribe reasonable rates and charges for service in Tempe and to regulate the granting of free telephone service to the municipality;

That free telephone service to a city for an extended period of time under an unauthorized contract between the city and a utility is illegal.

APPEARANCES:

Charles Woolf, town attorney, for complainant.

H. M. Fennemore, for respondent.

OPINION.

COLE, Commissioner:

This action was brought before the Commission by Tempe, an incorporated town in the county of Maricopa, State of Arizona. The complaint filed herein alleges, among other things, that Tempe is an incorporated town in the State of Arizona, duly incorporated under and by virtue of Act No. 72 of the seventeenth legislative assembly of the Territory of Arizona of the year 1893, which statute, as relating to the general incorporating of towns within the Territory of Arizona was re-enacted as Chapter 9 of Title 11 of the Revised Statutes of Arizona of 1901.

The complaint also alleges, in substance, that prior to the year 1911, a franchise was granted to the Overland Telephone and Telegraph Company, a corporation, by the town of Tempe, permitting said corporation to use and occupy its streets for telephone purposes and prescribing in said franchise certain rates for telephone service to be charged within said town, and alleging that said corporation accepted said franchise and operated its system thereunder following the grant; and that the granting of said

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franchise with its acceptance by the Overland Telephone and Telegraph Company, operated as a contract, particularly with respect to rates to be charged by said corporation and by which said corporation and its assigns are bound. The complaint further alleges in substance that in 1912, the respondent, The Mountain States Telephone and Telegraph Company, acquired by purchase all of the properties of the Overland Telephone and Telegraph Company, including its said franchise and right thereunder within the said town of Tempe; and that since acquiring said properties of the Overland Telephone and Telegraph Company, the respondent has changed the rates and classification of rates within said town and has discontinued certain free telephone service within said town, and particularly to certain public officers of said town, which said free service is alleged to be prescribed and required of the said Overland Telephone and Telegraph Company and its assigns by the terms of said franchise; that the respondent refuses to give to such parties and to such towns such free service as is prescribed in said franchise, and to maintain and render telephone service at the rates prescribed in said franchise, and prays this Commission to make an order requiring the respondent to give such service at such rates as is prescribed and under the terms of said franchise, and to that end render to said town and its officers the free service alleged and contracted for under the terms of the franchise.

To which the respondent, The Mountain States Telephone and Telegraph Company, has filed answer denying that it is now operating its exchange under and by virtue of the contract granted to said Overland Telephone and Telegraph Company, and in general denies the allegations of the complaint of the complainant, except as to immaterial facts, and sets up in justification of its rates and charges and its action in discontinuing such free service, certain orders of this Commission, heretofore made and entered.

The issue having been joined by proper pleading, the case came on legally for hearing before the Commission;

evidence was adduced in support of the contention of the complainant and of the answer of the respondent and voluminous briefs were filed by both parties to these proceedings, and the Commission being fully advised and after hearing all the evidence presented, finds the facts to be substantially as follows :

1. That the town of Tempe is duly incorporated as a town of the State of Arizona as alleged in the complaint of the complainant.

2. That on May 10, 1900, the complainant, town of Tempe, granted to the Sunset Telephone and Telegraph Company, a franchise, authorizing it to maintain and operate a telephone system and exchange within the corporate limits of the said town; that the Sunset Telephone and Telegraph Company conveyed to the respondent, The Mountain States Telephone and Telegraph Company, all its right, title and interest in and to the said franchise; that subsequent to the granting of this franchise to the Sunset Telephone and Telegraph Company, the Arizona Telephone and Telegraph Company, which from the evidence is evidently a successor of the Sunset Telephone and Telegraph Company, operated a general telephone business at Tempe; and that in 1912, the Arizona Telephone and Telegraph Company conveyed all of its property to the respondent in this cause, who is now the owner thereof; that in the year 1911, the town of Tempe granted to the Overland Telephone and Telegraph Company a franchise to carry on a general telephone business within the town limits of Tempe containing the stipulation in question, and in substance as set forth in complainant's complaint; that thereafter and in 1912, the Overland Telephone and Telegraph Company conveyed all of its properties to the respondent, The Mountain States Telephone and Telegraph Company, which is the owner thereof; and that following the purchase of the two companies named, the respondent immediately and with dispatch consolidated the two telephone systems theretofore existing in Tempe into one system and has since so operated same as one system.

3. That the acquiring of the plant and properties of the Overland Telephone and Telegraph Company by the respondent was made under and by virtue of an order of this Commission heretofore entered and hereinafter referred to.

4. That the franchises granted by the town of Tempe to the Sunset Telephone and Telegraph Company and the Overland Telephone and Telegraph Company were granted prior to Arizona becoming a state, and prior to the delegating to this Commission by the Constitution or by laws of any powers of supervision or control over public service corporations,

5. On the twenty-second day of October, 1912, this Commission issued an order designated as Special Order 19,* prescribing among other rates to be charged within the State and in other municipalities, the rates to be charged by the respondent within the town of Tempe; that such rates prescribed were namely: for main line public telephones, \$3.00 per month; for main line residence telephones, \$2.00 per month; and that thereafter to wit: on the sixteenth day of June, 1913, this Commission issued a supplementary order† permitting respondent to grant to municipalities, one free telephone to be used for official business for each 2,000 inhabitants, or fraction thereof, within the telephone exchange limits or area of such municipality, the basis of population to be agreed upon by the common council of the municipality and the respondent.

6. That the respondent is now charging in Tempe the rates prescribed by this Commission in said Special Order No. 19,* and has attempted to grant free telephone or free telephone service to said town, in accordance with the said supplemental order.† No effort was made by the complainant in this cause to show that the rates now in effect were unreasonable or unjust, and no proof was offered in this behalf. The sole contention of the complainant in this cause is that when the town of Tempe granted a franchise

* See Commission Leaflet No. 12, p. 1.

† See Commission Leaflet No. 22, p. 847.

to the Overland Telephone and Telegraph Company, and provided therein as a condition thereof, that certain rates should be charged for telephone service by the said company, and that certain free telephone service should be rendered to the town during the life of the franchise as a consideration for the granting of the franchise, acceptance of such by the grantee became a contract binding upon said corporation and its assignee, the respondent, beyond the power of this Commission under its authority to change or disturb. No complaint was made by the complainant as to the reasonableness of the rates now in effect; the whole contention is made upon the obligation of the alleged contract within the franchise. Testimony was offered at the hearing by the complainant tending to show that the franchise granted to the Overland Telephone and Telegraph Company was the franchise under which the respondent was operating at Tempe; testimony was also offered in behalf of the respondent that it claims to be operating under the provisions of the franchise granted to the Sunset Telephone and Telegraph Company and assigned to respondent, but the Commission has been very solicitous in the examination of the testimony and exhibits in this cause to ascertain all equities of the town with respect to any alleged agreement made by the complainant and the respondent or its predecessors in interest and particularly to conscientiously avoid the making of any order which would abrogate a lawful contract. In order to definitely decide this, we deemed it necessary not only to examine the nature of any alleged contract, but to ascertain the ability and power of the parties who made it. Section 4 of ordinance of Tempe, granting the franchise to the Overland Telephone and Telegraph Company, provides as follows:

"That said grantee and its assigns shall furnish to the citizens of Tempe inside the corporate limits of said town, residence telephones at a rental of not to exceed \$2.00 per month, and business house telephones at a rental of not to exceed \$2.50 per month for main line telephones, and not to exceed \$1.50 per month for party line telephones.

The said grantee and its assigns shall furnish to said town for its free use, without charge, at such places and for the use of such officers of said

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town during the term of this franchise, telephones in such manner as may be requested by its officers, not to exceed eight instruments, all of which shall be connected up with its telephone system * * *."

The complainant contends that the respondent as the successor in interest of the Overland Telephone and Telegraph Company should be required to maintain such schedule of rates as expressed in said section and furnish such free service as is provided therein. The trend of recent decisions with respect to the supervision of rates of public service corporations by the State, through a Commission or by legislative control, is favorable toward the granting of all reasonable power to the controlling body in any State for the fullest regulation respecting the transaction of the business of public service agencies; however, where lawful contracts are made in good faith and by parties who are fully authorized and have full power to contract respecting such matters as are expressed in the contract, the law is that such contracts can not be abrogated, but where contracts are made and there is a defect of the parties, this Commission will exercise its full power under the law to effect discontinuance of all discrimination in rates or practices of public service corporations, and to place rates for such upon an equitable and non-discriminatory basis. Assuming as a basis of argument that the respondent is operating its present plant by reason of rights obtained in the franchise granted to the Overland Telephone and Telegraph Company, the test of the whole question here presented is as to the power and authority of the town of Tempe to make such a contract as is alleged exists. The law is well settled that a municipal corporation organized under general law is a mere agency of the territorial or state government, and has no powers beyond those expressly delegated by the supreme power in the territory or state. It is contended by complainant that power was delegated to Tempe to regulate by contract the rates to be charged by respondent for telephone service under the general power granted in the subdivision of Paragraph

545, Revised Statutes of Arizona, 1901, "to have and exercise exclusive control over the streets and alleys, avenues and sidewalks of the town." The town of Tempe was organized under a general law of the Territory of Arizona, and under a law which delegated no special authority to Tempe respecting its control of public service companies, except to have and exercise control over streets, alleys, avenues, and sidewalks of the town. The Territory of Arizona has delegated to Tempe no powers beyond those included in such provision with respect to control over streets, etc. We find that no such power as would be necessary to regulate the rates of such service corporations within its borders was ever delegated by the legislature of the Territory of Arizona to the town of Tempe, and was certainly not delegated by the general provision referred to. This point is definitely decided in the case of *Home Telephone and Telegraph Company v. Los Angeles*, 211 U. S. 265. In this case the city of Los Angeles, a municipal corporation, was really endowed with power to grant franchises and was given the greatest plenary control of its streets and public ways. It is also authorized by the laws of the State of California to regulate rates of such service corporations within its corporate limits. However, the Supreme Court of the United States holds that even in such extreme cases, no power was conferred upon a municipality to fix, agree and contract upon telephone rates for a long period of time. We cite this as the leading case, although there are a number of other cases in point, which need not be cited here. We do not think therefore, that the town of Tempe had at the time that it contracted with the Overland Telephone and Telegraph Company, any delegated or other power to make any contract for any extended period of time, governing the rates to be charged for telephone service.

With respect to the free service to be granted the town such an agreement as is set forth in the franchise is beyond the power of Tempe to make. In this connection, we cite the case of *Public Service Electric Company v. Board of*

*Public Utility Commissioners et al.,** 93 Atl. 707, decided March 27, 1915, which specifically holds that a contract entered into between the plaintiff and city of Plainfield, which provided that the plaintiff should in consideration of the granting to it of certain rights in the streets and alleys of the city, light by electricity, free of charge, certain municipal buildings and rooms occupied by city officials, was void. Even in the event that the respondent should be required to occupy the streets of Tempe according to regulation of the Overland Telephone and Telegraph Company's franchise, such a contract was not made as would interfere with the power of this Commission to regulate rates, classification of service or regulate the transaction of the business of the respondent. We are not concerned, therefore, with any provision of said franchise, nor with the provision of the franchise granted to the Sunset Telephone and Telegraph Company, as to any fact or facts relating to the right of respondent to do business in the town of Tempe, further than the admission of the complaint that it is lawfully there.

The record shows that in the early part of 1912, the respondent acquired the properties of the Arizona Telephone and Telegraph Company, and that in June of the same year respondent acquired all of the properties of the Overland Telephone and Telegraph Company. On said dates both companies were operating within the State and in many localities were operating dual competing exchanges to the manifest expense, disadvantage and annoyance of telephone patrons. The record further shows that in June, 1912, this Commission, under the terms and conditions of Special Order No. 8,† specifically authorized the purchase of the properties of the Overland Telephone and Telegraph Company by the respondent, and in said order prescribed what the Commission considered due and proper conditions with respect to the consolidation of the

* See Commission Leaflet No. 41, p. 1327.

† See Commission Leaflet No. 8, p. 1.

dual system and exchanges within the State; and that the purchase of the properties of said Overland Telephone and Telegraph Company were made by the respondent under the terms and conditions of said order, and in October, 1912, this Commission entered its Special Order No. 19* providing for rates to be charged for telephone service within certain exchanges where dual service had theretofore been maintained and in other exchanges of the State where preferences and discriminations were known to exist; that this order was entered according to law and under the powers of the Commission to meet the special requirements of the conditions then affecting telephone service in the State of Arizona.

The Supreme Court of the State of Arizona in the case of *State of Arizona v. Tucson Gas, Electric Light and Power Company*, 15 Ariz. 294, has definitely decided the status of the powers of this Commission with reference to controlling the transactions of public service corporations. And we quote as follows from said decision:

"Therefore the Commission has been vested by Section 3 *supra* (Constitution of Arizona) with full power with the command to exercise it: (1) to prescribe charges and reasonable classification to be used; (2) just and reasonable rates and charges to be made and collected; (3) reasonable rules, regulations and orders by which public service corporations shall be governed in the transaction of business within the State."

We do not deem it necessary to enter into a discussion as to the powers of the Commission in making and entering Special order No. 8† and Special Order No. 19.* We think the Commission had full power to make such orders and enforce the provisions of the same. The record also shows that on the sixteenth day of June, 1913, this Commission entered a supplemental order‡ to regulate the granting of free telephone service to municipalities, and prescribed

* See Commission Leaflet No. 12, p. 1.

† See Commission Leaflet, No. 8, p. 1.

‡ See Commission Leaflet No. 22, p. 847.

that the respondent might grant to all municipalities in the State for official use such free service as would be non-discriminatory and systematize any concession made. Under this order, the town of Tempe would be entitled to one telephone for exchange service without charge. The evidence shows that respondent has been willing and is granting such service in accordance with this order. It is plainly evident from the *Plainfield* decision* and from the tenor of the law in other respects that free telephone service given for an extended period of time under an unauthorized contract between a city and a utility company is illegal. This Commission has felt that it had the power under the law and in pursuance of the law's mandate to require the discontinuance of the unlawful discriminations and to make this supplemental order. It has been shown by the testimony that the respondent is conscientiously adhering to the orders of the Commission.

We therefore find that the contentions of the plaintiff are not sustained, and

It is, therefore, ordered, That the complaint in this case be, and the same is hereby, dismissed, and the prayer of complainant denied.

Dated at Phoenix, Arizona, June 26, 1915.

* See Commission Leaflet No. 41, p. 1327.

CALIFORNIA.
Railroad Commission.

IN THE MATTER OF THE APPLICATION OF TOWN OF EMERYVILLE, BAY CITIES HOME TELEPHONE COMPANY AND THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY FOR AN ORDER AUTHORIZING THE TRANSFER AND ASSIGNMENT OF A FRANCHISE, AND FOR A CERTIFICATE THAT THE PUBLIC CONVENIENCE AND NECESSITY REQUIRE THE EXERCISE THEREOF.

Application No. 1724 — Decision No. 2553.

Decided June 30, 1915.

Assignment of Franchise Authorized and Certificate of Public Convenience and Necessity to Exercise Said Franchise Granted upon Condition.

Bay Cities Home Telephone Company sought authority to assign a certain franchise to The Pacific Telephone and Telegraph Company and the latter company applied for a certificate declaring that public convenience and necessity required the exercise by said company of said franchise rights. The town of Emeryville, the grantor of the franchise, joined in the application.

The franchise in question, originally granted by the town of Emeryville to the Home Telephone Company of Alameda County, and subsequently assigned to Bay Cities Home Telephone Company, provided, *inter alia*, that the grantee would not, without the consent of the town of Emeryville evidenced by an ordinance, transfer its property or any of its franchise rights to any company then engaged in the telephone business in Emeryville. Subsequently, but prior to the effective date of the Public Utilities Act, Bay Cities Home Telephone Company, without obtaining the required consent, did transfer to The Pacific Telephone and Telegraph Company, through the instrumentality of Home Long Distance Telephone Company, a corporation created for the purpose, all its physical property in Emeryville, but failed to transfer its franchise.

The predecessor of The Pacific Telephone and Telegraph Company had been operating in Emeryville at the time of the granting of the franchise to the Home Telephone Company and it was contended that the transfer by Bay Cities Telephone Company of its tangible property to

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the Pacific company was a violation of the franchise. A compromise, evidenced by an ordinance, was made whereby the town, *inter alia*, consented, in consideration of certain concessions by the Pacific company, to the transfer of both the physical property and the franchise in question, and the present proceeding was to obtain authority from the Commission to transfer said franchise and to secure a certificate declaring that public convenience and necessity required the exercise by the Pacific company of said franchise.

Held: That the Commission should authorize the transfer of said franchise by the Bay Cities company and the exercise by the Pacific company of the rights and privileges under said franchise, but only upon the following condition: that the Pacific company shall stipulate 1) that it will abide by all of the provisions of the original ordinance, except as modified by the ordinance embodying the terms of settlement; 2) that it will abide by all the provisions of the compromise ordinance; 3) that the price paid for the physical property shall not be taken before the Commission or any other public authority, as representing for rate fixing or any other purpose, the real value of the property; 4) that it will not claim a value for the original franchise in excess of the actual cost to the Pacific company of acquiring said franchise.

APPEARANCES:

Pillsbury, Madison and Sutro, by *H. D. Pillsbury*, for The Pacific Telephone and Telegraph Company.

William Thomas, by *Alden Ames*, for Bay Cities Home Telephone Company.

OPINION.

LOVELAND, *Commissioner*:

This is an application by Bay Cities Home Telephone Company for authority to assign a certain franchise to The Pacific Telephone and Telegraph Company and of the latter company for a certificate that public convenience and necessity require the exercise by said company of the rights granted by said franchise. The town of Emeryville joins in the application.

The franchise referred to was granted by the town of Emeryville to Home Telephone Company of Alameda County, on the twenty-fifth day of March, 1907, by Ordinance No. 76, and was later assigned by the grantee to Bay Cities Home Telephone Company, one of the applicants herein. A copy of said ordinance is attached to the petition

herein, and marked "Exhibit A," and reference is hereby made thereto.

Ordinance No. 76 grants to Home Telephone Company of Alameda County, its successors and assigns, the right to use the public streets of Emeryville for the construction and operation of a telephone system. Among other provisions are the following:

1. The telephone company agrees to furnish two free telephones for the use of the city.
2. The telephone company agrees to pay to the city after five years, as provided by the Broughton Act, 2 per cent. of its gross revenues from business under the franchise.
3. Paragraph 5 of Section III, provides in part as follows:

"That the said grantee, his or its successors or assigns, shall not, without the consent of the town of Emeryville, evidenced by ordinance duly passed by the board of trustees thereof, sell or transfer its property or any of the rights or privileges authorized or granted by said franchise to any person, company, combination, trust or corporation now engaged in the telephone business in the town of Emeryville, and shall not at any time enter into any agreement directly or indirectly with any person, company, trust, combination or corporation now engaged in the telephone business in the town of Emeryville concerning the rate to be charged for telephone service."

On March 15, 1912, Bay Cities Home Telephone Company transferred all its physical properties through the instrumentality of Home Long Distance Telephone Company, a corporation created for that purpose, to The Pacific Telephone and Telegraph Company. By making this transfer eight days before the effective date of the Public Utilities Act, the parties avoided the necessity of applying to the Railroad Commission for authority to make the transfer. The Bay Cities company, however, failed to transfer its franchise. Hence it now becomes necessary, under the provisions of Sections 50 and 51 of the Public Utilities Act, to secure this Commission's authorization before the company can transfer its franchise and before

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The Pacific Telephone and Telegraph Company can exercise rights thereunder.

It has been contended that the above-mentioned transfer by the Bay Cities Home Telephone Company of its tangible property to The Pacific Telephone and Telegraph Company was a violation of the conditions of the franchise.

In order to settle this contention and to enable Bay Cities Home Telephone Company to discharge the sureties on its bond in the sum of \$1,000 given to the town of Emeryville to insure the faithful performance of the provisions of the franchise, a compromise has been entered into between the various parties which is set forth in Ordinance No. 130, passed by the board of trustees of the town of Emeryville on January 18, 1915. Copy of said ordinance is attached to the petition herein and marked "Exhibit A." Reference is hereby made thereto.

The ordinance provides in part as follows:

1. Town of Emeryville consents to the sales of March 15, 1912.
2. Town of Emeryville consents to the transfer to The Pacific Telephone and Telegraph Company of the franchise granted by Ordinance No. 76.
3. The Pacific Telephone and Telegraph Company agrees to pay to the town of Emeryville 2 per cent. of its gross receipts annually, as prescribed by Ordinance No. 76.
4. The Pacific Telephone and Telegraph Company agrees to execute a bond in favor of the town of Emeryville in the sum of \$1,000 for the faithful performance of the franchise granted by Ordinance No. 76.
5. The Pacific Telephone and Telegraph Company agrees to furnish without cost to the town of Emeryville, two main telephones and four extension telephones, and also to allow the town of Emeryville certain privileges in connection with its fire alarm and police patrol systems.

The ordinance also provides for the discharge of the sureties of Bay Cities Home Telephone Company and the cancellation of all existing agreements for furnishing telephone service to the town of Emeryville by The Pacific Telephone and Telegraph Company, Home Telephone Company of Alameda County, Bay Cities Home Telephone Company and Home Long Distance Telephone Company.

At the hearing of this application on June 22, 1915, no opposition was presented thereto, and I shall accordingly recommend that this petition be granted.

I submit the following form of order:

ORDER.

Bay Cities Home Telephone Company having applied to the Railroad Commission for an order authorizing the transfer to The Pacific Telephone and Telegraph Company of the rights and privileges granted by the town of Emeryville on March 25, 1907, by Ordinance No. 76, and The Pacific Telephone and Telegraph Company having applied for a certificate that public convenience and necessity require, and will require, the exercise by it of said rights and privileges, and the town of Emeryville having joined in said application;

And a public hearing having been held thereon, the Railroad Commission hereby authorizes said transfer and declares that public convenience and necessity require the exercise by The Pacific Telephone and Telegraph Company of said rights and privileges, but only on the following conditions, and not otherwise:

1. This order shall not become effective unless The Pacific Telephone and Telegraph Company shall file with the Railroad Commission, within thirty days from the date of the order herein, a stipulation executed on behalf of said company, by its officers thereunto duly authorized by a resolution of its board of directors, agreeing as follows:

(a) That the company accepts the transfer of the rights and privileges granted by the town of Emeryville by Ordinance No. 76 in good faith, intending to abide by every provision thereof, except insofar as expressly

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modified by the provisions of Ordinance No. 130, adopted by the town of Emeryville on January 18, 1915.

(b) That the company accepts the provisions of said Ordinance No. 130 of the town of Emeryville, intending in good faith to abide thereby.

(c) That the price paid for the physical properties of Bay Cities Home Telephone Company in the town of Emeryville shall not be taken before the Railroad Commission or any other competent public authority as representing for rate making or any other purposes the real value of the property.

(d) That the company does not, and never shall, claim in any proceeding before this Commission, or any other public body, a value for the franchise granted to Home Telephone Company of Alameda County by Ordinance No. 76 of the town of Emeryville in excess of the actual cost to The Pacific Telephone and Telegraph Company of acquiring said franchise.

2. The Railroad Commission reserves the right to revoke this order if The Pacific Telephone and Telegraph Company fails to comply with any of the provisions of its settlement with the town of Emeryville, as set forth in Ordinance No. 130, passed by the board of trustees of said town of Emeryville on January 18, 1915.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this thirtieth day of June, 1915.

IN THE MATTER OF THE APPLICATION OF THE WESTERN UNION TELEGRAPH COMPANY, A CORPORATION, FOR PERMISSION TO CLOSE ITS OFFICE AND DISCONTINUE TELEGRAPH SERVICE AT SAN ANDREAS, CALIFORNIA.

Application No. 1674—Decision No. 2558.

Decided July 2, 1915.

Discontinuance of Telegraph Office Authorized.

Applicant sought authority to discontinue the operation of its telegraph office at San Andreas.

The applicant operated a telegraph office at San Andreas where it transferred messages to and received messages from a telegraph line ex-

tending from San Andreas to Angels Camp. Application had been made by this San Andreas-Angels Camp telegraph line to discontinue operation, and as the messages received from this line constituted so great a part of the business of the Western Union at San Andreas that the station there could be continued only at a loss after the discontinuance of the San Andreas-Angels Camp Line, applicant sought to discontinue its office at San Andreas.

Held: That since The Western Union Telegraph Company owns and operates lines extending not only throughout California, but throughout the United States and extending also into foreign territory, while it may be shown that the continued operation of its San Andreas office, if the business arising from the Angels Camp office were to be withdrawn, would result in a loss so far as that particular office was concerned, the Commission must consider that San Andreas is but one of a vast number of offices which go to make up the Western Union's business as a whole and is but a very small unit of its entire system which its obligations to the public demand that it shall maintain;

That the Commission does not admit that each unit in a system of such magnitude as that embraced in the applicant's system should be made to be profitable in and of itself, for to grant that would admit the right of the applicant to come before the Commission for authority to close any or all of its offices, no matter how necessary or important their operation may be to the public, if they could be shown to be unprofitable when considered separately;

That although a public utility engaged in the telegraph or telephone business may not at its pleasure shift its responsibility to others who happen to be so situated as to be able to assume and carry such responsibility, as The Pacific Telephone and Telegraph Company can and is willing to transmit telegrams to and from San Andreas by telephone, this application should be granted, provided that before the applicant be permitted to close its San Andreas office it shall, in accordance with its offer, establish an office at Angels Camp.

APPEARANCES:

A. H. May, for The Western Union Telegraph Company.

James T. Shaw, for The Pacific Telephone and Telegraph Company.

OPINION.

GORDON, Commissioner:

This application by The Western Union Telegraph Company for permission to close its office and discontinue telegraph service at San Andreas was filed with the Railroad Commission immediately following the filing of an appli-

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cation by Charles P. Snyder, who owns and operates a telegraph line between Angels Camp and San Andreas, for permission to discontinue its operation. Heretofore telegrams forwarded from or addressed to Angels Camp have been transferred by the Western Union company at San Andreas, and according to the present application these telegrams have constituted the greater part of the business handled by the Western Union company at San Andreas. It is accordingly by reason of the contemplated withdrawal of the Angels Camp business that the Western Union company is now seeking permission to close its San Andreas office upon the representation that the receipts from the balance of its San Andreas business are not sufficient to continue the office except at a considerable loss.

The line between Angels Camp and San Andreas, owned by Mr. Snyder, reaches only these two points and, according to the testimony which was offered at the hearing of the application for permission to discontinue its use, the gross amount of business handled over it is not sufficient to meet operating expenses. Its continued operation would, therefore, result in loss to the owner. The Western Union Telegraph Company, however, owns and operates telegraph lines extending not only throughout California, but throughout the United States and extending also into foreign territory, and while it may be shown that the continued operation of its San Andreas office, if the business arising from the Angels Camp office were to be withdrawn, would result in a loss so far as that particular office is concerned, we cannot overlook the fact that San Andreas is but one of a vast number of offices which go to make up its business as a whole, and it is but a very small unit of its entire system which its obligations to the public demand that it shall maintain. It goes without saying that this Commission does not admit that each unit in a system of such magnitude as that embraced in this applicant's system should be made to be profitable in and of itself. To grant that each separate unit should be made to be profitable would be to admit the right of the applicant to come before the Commission for authority to close any other or

all of its offices, no matter how necessary or important their operation may be to the public, if they could be shown to be unprofitable when considered separately. The possible effect of such action, if taken, cannot, of course, be ignored.

In this particular instance, it happens that The Pacific Telephone and Telegraph Company, which also handles telegraphic business, although it does not employ a telegraph operator at San Andreas, has an office at this point, and if the Western Union company were permitted to withdraw The Pacific Telephone and Telegraph Company will receive and forward telegrams by telephone. I do not wish to be understood to admit that any public utility engaged in the telegraph or telephone business in this State may at its pleasure shift its responsibilities to others who may happen to be so situated as to be able to assume and carry the responsibility, but in this case The Pacific Telephone and Telegraph Company has not objected though given the opportunity to do so.

The hearing in this proceeding has also developed that, since Mr. Snyder desires to withdraw his telegraph service at Angels Camp, the Western Union company in that event is willing to establish an office at Angels if it be permitted to withdraw from San Andreas. Ample public notice of the hearing of this application was given, but no one interested in Western Union service at San Andreas appeared to offer objection to the proposed withdrawal of the Western Union company, and since such telegraphic business as may be offered after the discontinuance of the Western Union office at San Andreas may be handled by telephone over the lines of The Pacific Telephone and Telegraph Company, I am willing to recommend that this application be granted upon the condition that before it shall close its San Andreas office the applicant shall establish a telegraph office at Angels Camp with the understanding that, if after a sufficient time it should appear that its further continuance may not be warranted, the applicant may petition the Commission for permission to discontinue it.

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The following order is recommended:

ORDER.

Application having been made by The Western Union Telegraph Company, a public utility corporation, for permission to close its office and to discontinue telegraph service at San Andreas, Calaveras County, California, and a public hearing having been duly held, and no objection other than as set forth in the preceding opinion appearing, and it appearing to this Commission, as further set forth in the preceding opinion, that such telegraphic business as may hereafter be offered at San Andreas may be transmitted by telephone over the lines of The Pacific Telephone and Telegraph Company.

It is hereby ordered, That the application be, and it is hereby, granted.

Provided, That before the applicant, The Western Union Telegraph Company, shall be permitted to close its office at San Andreas, it shall establish a telegraph office and maintain a telegraph operator at Angels Camp, Calaveras County, and shall publish, put into effect and file with this Commission on or before thirty days from the date of approval of this order its schedule of rates for Angels Camp, which rates shall conform to the rates at present in effect at its other offices located in the same square in which Angels Camp is located.

And provided further, That this permission is not to be taken as approval of the rates hereinabove referred to since the Commission has not passed upon their reasonableness.

And it is hereby further provided, That this permission is not to be taken by this applicant or by any other public utility operating within this State as a precedent to be followed in other cases.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this second day of July, 1915.

IN THE MATTER OF THE APPLICATION OF CHARLES P. SNYDER,
DOING A TELEGRAPH BUSINESS UNDER THE NAME OF THE
ANGELS TELEGRAPH COMPANY FOR AN ORDER AUTHOR-
IZING HIM TO DISCONTINUE TELEGRAPH SERVICE.

Application No. 1648 — Decision No. 2560.

Decided July 2, 1915.

Discontinuance of Telegraph Service Authorized.

Applicant sought authority to discontinue the operation of his telegraph line between San Andreas and Angels Camp. The applicant had operated this line in connection with his law practice at Angels Camp, his stenographer serving as telegraph operator, but later he removed his law office from Angels Camp to San Andreas. If this San Andreas-Angels Camp telegraph service was to be continued it would be necessary to employ a telegraph operator for the sole purpose of handling the telegraph business and operation would be continued at an actual loss.

The Western Union Telegraph Company was willing to install an office at Angels Camp on the understanding that if, after a fair trial, it should appear that the continuance of this office was not justified, the company might come before the Commission with an application for permission to discontinue.

Held: That public convenience and necessity required that Angels Camp should be furnished with telegraph service;

That to require the applicant to furnish this service would result in direct personal loss to him.

Ordered, That the applicant be authorized to discontinue his telegraph business *provided* that The Western Union Telegraph Company establish at once a telegraph office in Angels Camp upon the condition that if, after a fair trial, continuance of this office should not be justified, the company might apply to the Board for authority to discontinue.

APPEARANCES:

Charles P. Snyder, for The Angels Telegraph Company.

A. H. May, for The Western Union Telegraph Company.

James T. Shaw, for The Pacific Telephone and Telegraph Company.

OPINION.

GORDON, Commissioner:

This is an application by Charles P. Snyder, doing a public telegraph business under the name of The Angels Telegraph Company between Angels Camp and San Andreas,

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for an order of this Commission authorizing him to discontinue the operation of his line for telegraph service. The Western Union Telegraph Company now operates a telegraph office at San Andreas, and telegrams forwarded from or addressed to Angels Camp are transferred by Western Union lines at San Andreas.

The applicant has heretofore been engaged in law practice in Angels Camp and in conducting this practice has employed a clerk and stenographer who has also served as telegraph operator. Having been elected to the office of district attorney of Calaveras County, he has discontinued his law practice at Angels Camp and removed his law office to San Andreas, the county seat, which will necessitate the employment of a telegraph operator for no other purpose than handling the telegraph business if this service is to be continued.

A hearing having been held at Angels Camp on June 17, testimony was introduced to show that the receipts from the operation of this line since the removal of the applicant's law office from Angels Camp, are not sufficient to continue its operation except at an actual loss. It was shown also that the storms of the last winter have left the line inoperative, since which time telegrams have been forwarded by telephone to and from Angels over the lines of The Pacific Telephone and Telegraph Company; and it is claimed by the applicant that to place his line in proper repair to render its further operation possible will necessitate the expenditure of further capital which will not be warranted by the receipts.

There appears to be sufficient public necessity for the continuance of telegraph service at this point, however, and to further complicate the situation, The Western Union Telegraph Company, since this application was filed with the Commission, has followed with a further application for permission to discontinue its office at San Andreas on the representation that with the withdrawal of the Angels Camp business the receipts from its San Andreas office will

be insufficient to continue its operation except at a considerable loss.

The testimony has disclosed, however, that The Western Union Telegraph Company now maintains a telegraph line with which certain of its other offices in this section are connected, and which passes directly through Angels Camp. It is admitted by that company that the cost of installing an office at Angels Camp and connecting it with this line would be comparatively small, and at the suggestion of the Commission it has secured a location for the establishment of an office and has employed an operator with the understanding that if, after a fair trial it should appear that its continuance may not be sufficiently justified, it may again come before the Commission with an application for permission to discontinue it.

While recognizing the public necessity and convenience in this case, it is also apparent that to require Mr. Snyder to make necessary repairs to his line and continue under the circumstances to serve the public would result in a personal loss to him. The willingness and readiness of the Western Union company to assume the responsibility from which the applicant desires to be relieved offers at least a temporary solution of the situation to which I can see no present objection, and upon the condition that The Western Union Telegraph Company shall at once establish its office at this point I am willing to recommend that this application be granted and submit the following order:

ORDER.

Application having been made to this Commission by Charles P. Snyder, conducting a public telegraph business at Angels Camp, Calaveras County, under the name of The Angels Telegraph Company, for an order authorizing him to discontinue the said telegraph business, and a hearing having been duly held, and it appearing to the Commission, as set forth in the foregoing opinion, that the public necessity and convenience will be protected and subserved by the agreement of The Western Union Telegraph Company to establish a telegraph office in Angels Camp,—

It is hereby ordered, That this application be, and it is hereby, granted.

Provided, That The Western Union Telegraph Company shall at once establish a telegraph office in Angels Camp under the conditions referred to in the foregoing opinion.

This opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this second day of July, 1915.

GEORGE E. SMALL *et al.* v. THE PACIFIC TELEPHONE AND
TELEGRAPH COMPANY.

Case No. 808 — Decision No. 2576.

Decided July 8, 1915.

**Refusal of Direct Connection with Exchange Other Than That Within
Whose Limits Subscriber is Located Held Justified.**

The complaint alleged that the defendant refused the complainants direct connection with the Porterville exchange.

Complainants, who had purchased a line which had formerly been connected with the applicant's Porterville exchange, were actually situated within the limits of the applicant's Terra Bella exchange and were new patrons without any prior claim to the Porterville service.

By a previous order* the Commission had authorized the defendant to establish an exchange at Terra Bella under certain specified conditions, and in this order had recognized in effect the defendant's right to serve all of the patrons within a certain territory,—excepting certain parties who were at that time served from Porterville,—from the exchange which it was authorized to establish at Terra Bella.

Held: That as the complainants are located within territory which is properly tributary to the defendant's Terra Bella exchange, and as they have no rightful present claim to exchange service except through the Terra Bella exchange, the complaint should be dismissed.

APPEARANCES:

George E. Small, in propria persona.

James T. Shaw, for The Pacific Telephone and Telegraph Company.

*See Commission Leaflet No. 27, p. 35.

OPINION.

GORDON, *Commissioner*:

This is a complaint brought by George E. Small and five other parties who are residents of a certain section of Tulare county, California, situated between the town of Terra Bella and the city of Porterville, against The Pacific Telephone and Telegraph Company, alleging that the defendant company has, without due authority, denied them the right of telephone service through direct connection with the defendant's local telephone exchange located in Porterville, and asking that the Commission require the defendant to restore service through the connection at Porterville of a line over which they formerly had this service.

The defendant company has filed a formal answer to the complaint in which, among other things, it alleges that the complainants are within the exchange area of Terra Bella at which it has established a telephone exchange under authority conferred by this Commission, and that it is ready and willing to serve the defendants with telephone service at Terra Bella at rates on file with the Commission and in effect at that point. It is further alleged that the temporary service which these complainants had out of the Porterville exchange was obtained through certain misrepresentations which were made with reference to their location.

The case was heard in Porterville on June 19. Testimony was introduced to show that on or about February 10, 1915, the complainants purchased a portion of a line from other parties which formerly had been connected at Porterville with the defendant's exchange and at Ducor with an exchange which is owned by the Ducor-California Hot Springs Telephone Company, the portion of the line purchased being that end of it which was connected at Porterville. It was also shown that, prior to this purchase and until they connected telephones with the line thus acquired, the complainants have all been without telephone service at either of these points, and the defendant company has taken the position that it was only by reason of the fact that their

several locations were represented to be within the Porterville exchange area that Porterville service was temporarily obtained. The complainants deny that misrepresentation was made and claim that they would not have purchased this line had they known that there would be any question as to their right to use it to obtain connection at Porterville, and that, having purchased it in good faith, they should have the desired service as otherwise their investment would represent a loss. Since the testimony of the various witnesses is contradictory in this particular respect, the question of deciding this point would resolve itself into one of determining the integrity of the witnesses. The merits of the case, however, do not hinge upon this point.

Upon the formal application of this defendant and others, and after a formal hearing by this Commission, an order* was issued in January, 1914, permitting the defendant to establish an exchange at Terra Bella under certain specified conditions, and recognizing in effect the defendant's right to serve all of its patrons within certain territory — excepting certain parties who were at that time served from Porterville — from the exchange which it was authorized to establish at Terra Bella. If these complainants are located within the recognized Terra Bella exchange area, and if they are now patrons without a prior claim to Porterville service, the Commission cannot grant that they now have such claim regardless of their present ownership of this line or of the circumstances which may have prompted its purchase.

The testimony shows, and the fact is admitted, that they are located within this territory. It shows further that their line was acquired after the exchange was established at Terra Bella, and that, prior to its purchase, they were not patrons of the defendant and were without telephone service at their several locations. Furthermore it is admitted that their objection to being connected at Terra

* See Commission Leaflet No. 27, p. 35.

Bella is principally due to the necessity of paying toll charges for talking between that point and Porterville.

In view of these facts, the following order is submitted.

ORDER.

Complaint having been made to this Commission by George E. Small, *et al.*, complainants, residents of a certain territory situated between the city of Porterville and the town of Terra Bella, in Tulare County, California, against The Pacific Telephone and Telegraph Company, defendant, alleging that defendant, The Pacific Telephone and Telegraph Company, has disconnected from its Porterville exchange a certain telephone line over which direct telephone service at Porterville has been heretofore furnished the complainants, and asking that said defendant be required to restore said connection and said telephone service, and a hearing having been had, and the Commission being fully apprised in the matter,—

This Commission hereby finds as a fact:

1. That the said complainants, George E. Small, *et al.*, are located within territory which is properly tributary to defendant's Terra Bella exchange.

2. That the said complainants have no rightful present claim to exchange telephone service except through the defendant's Terra Bella exchange.

And basing its conclusions on the foregoing findings of fact,—

It is hereby ordered, That the complaint herein be, and it is hereby, dismissed without prejudice.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this eighth day of July, 1915.

IN THE MATTER OF THE APPLICATION OF SACRAMENTO VALLEY TELEPHONE COMPANY FOR AUTHORIZATION TO CREATE A BONDED INDEBTEDNESS OF \$500,000, TO EXECUTE A DEED OF TRUST TO SECURE THE SAME, TO PURCHASE PROPERTY, TO ISSUE STOCK AND BONDS FOR CASH AND FOR PROPERTY AND TO OPERATE UNDER VARIOUS FRANCHISES; OF GLENN COUNTY TELEPHONE COMPANY FOR AUTHORIZATION TO SELL ITS PROPERTY FOR CASH, BONDS AND STOCK OF SACRAMENTO VALLEY TELEPHONE COMPANY; OF TEHAMA COUNTY TELEPHONE COMPANY FOR AUTHORIZATION TO SELL ITS PROPERTY FOR CASH, BONDS AND STOCK OF SACRAMENTO VALLEY TELEPHONE COMPANY AND OF THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY FOR AUTHORIZATION TO SELL CERTAIN PROPERTY FOR BONDS AND STOCK OF SACRAMENTO VALLEY TELEPHONE COMPANY AND TO SUBSCRIBE FOR STOCK OF SACRAMENTO VALLEY TELEPHONE COMPANY.

Application No. 1680 — Decision No. 2580.

Decided July 8, 1915.

Consolidation of Competing Companies Authorized — Authority to Transfer Properties and Franchises Granted — Issue of Stock and Bonds by Consolidated Company Authorized — Acquisition of Large Majority of Said Stock by Another Telephone Company Authorized — Conditions Imposed on All Authorizations.

Applicants sought to consolidate the properties of the Glenn County Telephone Company, the Tehama County Telephone Company and certain portions of the telephone system of The Pacific Telephone and Telegraph Company in Glenn and Tehama counties, including its exchange facilities but excepting its through toll lines, the consolidated company to be known as the Sacramento Valley Telephone Company and to own the local exchange systems in Glenn and Tehama counties and the toll system located wholly within those two counties. The Sacramento Valley Telephone Company sought authority to mortgage the property which it was to acquire by the consolidation and to issue \$193,500 par value of stock and \$190,000 face value of bonds. The Pacific Telephone and Telegraph Company also sought authority to acquire \$190,000 par value of the stock to be issued by the Sacramento Valley company.

The Glenn County Telephone Company and The Pacific Telephone and Telegraph Company had been competing in Glenn County and the Tehama County Telephone Company and the Pacific company had been competing in Tehama County. All three companies had found competitive operation unprofitable and unsatisfactory and to put an end to this competition had brought the present applications.

The Commission considered the value of the properties to be consolidated, the price at which said properties were to be sold to the consolidated company, the capitalization per telephone station, the earnings and expenses of the several properties for the year 1914, and the probable revenues and expenses of the consolidated company, both total and per station.

The Commission also considered the disposition which the consolidated company proposed to make of the securities which it sought authority to issue and found that the control of the consolidated company would be in the hands of the Pacific company. The proposed deed of trust to secure the bonds was also considered, but as it was indefinite in several respects, approval was withheld until it should be made more definite.

The consolidated company agreed to assume all contract obligations for connecting telephone service in Glenn and Tehama counties now binding upon any of the three companies to be consolidated.

Held: That the Commission must determine whether the competitive condition that had existed or the proposed condition of regulated monopoly is more in the public interest.

That regulated monopoly is more in the public interest than is competition, since competitive service not only causes duplication of facilities and necessitates the payment by the subscribers of a return upon duplicated property, although a single facility would be adequate to furnish the necessary service, but also reduces the revenues of the competing companies and causes a curtailment and depreciation of service.

That the consolidation will lead to a great extension and improvement of service, and whereas rates may be increased, the amount to be paid to the consolidated company will not be greater than the total paid to the competing companies for service equal in extent.

That the applications should be granted, said authority to be subject to the conditions set forth in the order and to become effective only after the Commission shall have issued a supplemental order that the conditions set out have been complied with.

APPEARANCES:

H. P. Andrews, for Glenn County Telephone Company, Tehama County Telephone Company and Sacramento Valley Telephone Company.

J. T. Shaw and *H. D. Pillsbury*, for The Pacific Telephone and Telegraph Company.

OPINION.

GORDON, *Commissioner*:

This is an application on the part of Glenn County Telephone Company and Tehama County Telephone Company to sell their telephone properties to Sacramento Valley Telephone Company; on the part of The Pacific Telephone and Telegraph Company to transfer certain portions of its telephone plant located in Glenn and Tehama counties to Sacramento Valley Telephone Company; and an application by Sacramento Valley Telephone Company to mortgage the property which it will thus acquire and to issue \$193,500 par value of stock and \$190,000 face value of bonds. The Pacific Telephone and Telegraph Company requests authority also to acquire \$190,000 par value of the stock of Sacramento Valley Telephone Company.

These applications have grown out of a competitive situation in the telephone business of Glenn and Tehama counties. The Pacific Telephone and Telegraph Company had been serving this territory for a number of years. Dissatisfaction with the service rendered by The Pacific Telephone and Telegraph Company led to the organization, in December, 1907, of the Glenn County Telephone Company, and in July, 1910, of the Tehama County Telephone Company, the former serving the people of Glenn County and the latter those of Tehama County.

Each of these companies has competed in its respective field with The Pacific Telephone and Telegraph Company. After an experience extending over a period of years, all three companies report that the competitive operation has been unprofitable and dissatisfactory. For the purpose of bringing this situation to a close, they join in the application here presented.

In general terms, the application provides for the consolidation of the properties of the Glenn County Telephone Company, the Tehama County Telephone Company, and certain portions of the telephone system of The Pacific Telephone and Telegraph Company in Glenn and Tehama

counties, including its exchange facilities, but excepting its through toll pole lines and its through toll aerial wires. The proposed consolidation contemplates that the new company, to be known as Sacramento Valley Telephone Company, shall own the local exchange systems in Glenn and Tehama counties and the toll service located wholly within those two counties. The through long distance toll service is to be retained by The Pacific Telephone and Telegraph Company. The Pacific Telephone and Telegraph Company is to retain exchange lines in a small area in northern Tehama County, served by one of its exchanges in Shasta County.

The applicants have submitted estimates of the value of the properties to be consolidated as follows:

Glenn County Telephone Company properties.....	\$114,960 69
Tehama County Telephone properties.....	66,797 15
The Pacific Telephone and Telegraph Company properties to be transferred	226,226 76
TOTAL	\$407,984 60

It is also proposed by the applicants that the Glenn County Telephone Company shall transfer to the Sacramento Valley Telephone Company its franchises granted by the county of Glenn and by the town of Willows; that the Tehama Telephone Company shall transfer to the Sacramento Valley Telephone Company its franchises granted by the county of Tehama and the towns of Tehama, Red Bluff and Corning. No provision is made for the transfer to the Sacramento Valley Transfer Company of the franchises now held by The Pacific Telephone and Telegraph Company in Willows and Red Bluff.

The properties which it is proposed the Glenn County Telephone Company shall transfer to the Sacramento Valley Telephone Company are described in "Exhibit F," attached to the application herein. The physical properties therein described may be summarized as follows:

Glenn County Telephone Company's exchanges and systems located at Orland, Willows, Germantown and Butte City, all in Glenn County;

The exchange lines radiating therefrom and the toll lines connecting the exchanges;

Also toll lines extending from Orland to Newville, thence south to Elk Creek, Rockville, Winslow, Stonyford and East Park Dam;

Also toll lines from Orland to Hamilton City, Saint John and south to Princeton.

The properties which it is proposed shall be transferred by Tehama County Telephone Company to Sacramento Valley Telephone Company are described in "Exhibit H," attached to the application herein. The physical properties therein described may be summarized as follows:

The Tehama County Telephone Company's exchanges and systems located at Red Bluff and Corning, in Tehama County, together with the exchange lines radiating therefrom;

Also toll lines from Red Bluff south to Corning and Tehama;

Also the toll line west to Paskenta.

The properties which it is proposed shall be transferred by The Pacific Telephone and Telegraph Company to Sacramento Valley Telephone Company are described in "Exhibit J," attached to the application herein. This exhibit contains the deed of sale, which reads in part as follows:

"The Pacific Telephone and Telegraph Company agrees to sell all of its telephone exchanges in the counties of Glenn and Tehama, and the exchange lines radiating therefrom, also all other property situated in the counties of Glenn and Tehama, except,

1. Through toll pole lines,
2. Through toll aerial wires,
3. The subscriber's stations which are duplicated by the stations of the Glenn and Tehama counties telephone companies,
4. The local pole and wire lines serving subscribers in Tehama County from the switchboard in Cottonwood, Shasta County,
5. The equipment in Red Bluff exchange central office other than the equipment used in testing the toll lines,
6. The switchboard in the Orland exchange central office,
7. The equipment in the Butte City exchange central office,
8. The material and supplies, the shop and store equipment in the exchanges at Red Bluff, Corning, Orland, and Butte City."

The Pacific Telephone and Telegraph Company will turn over to the Sacramento Valley Telephone Company a portion of its telephone plants located at the following points in Glenn and Tehama counties:

Butte City	Norman	Winslow	Paskenta
Elk Creek	Orland	Corning	Payne's Creek
Fruto	Willows	Los Molinos	Red Bluff
Hamilton	Saint John	Manton	Vina

The applicants appraise the properties of The Pacific Telephone and Telegraph Company in this territory which it is now proposed to transfer to Sacramento Valley Telephone Company at \$243,693.63. Of this amount, property valued by the applicants at \$226,226.76 will be turned over to the Sacramento Valley Telephone Company. The balance will be retained by The Pacific Telephone and Telegraph Company.

The Sacramento Valley Telephone Company will, therefore, operate a system of exchanges and toll lines in Glenn and Tehama counties with central exchange switchboards and exchange and toll lines radiating therefrom, at Red Bluff, Payne's Creek, Manton, Los Molinos, Vina, Corning and Paskenta in Tehama County; and at Orland, Saint John, Hamilton, Germantown, Willows, Norman, Butte City, Fruto and Elk Creek, in Glenn County; and toll lines and toll stations at Proberta and Henleyville, in Tehama County; Newville, Winslow and Athena, in Glenn County; and at Stonyford, East Park Dam and Princeton, in Colusa County.

For the calendar year 1914 the Glenn County Telephone Company reported earnings and expenses as follows:

Operating Revenues	\$15,482 50
Operating Expenses	12,116 07
<hr/>	
Net Operating Revenue	\$3,366 43
Interest, Rent, etc.	3,246 85
<hr/>	
Surplus for year.....	\$119 58

For the calendar year 1913, the company reported a surplus of \$3,777.15.

For the calendar year 1914, the Tehama County Telephone Company reported as follows:

Operating Revenues	\$8,567 60
Operating Expenses	8,502 96
<hr/>	
Net Operating Revenue.....	\$64 64

Neither the Glenn County Telephone Company nor the Tehama County Telephone Company have paid any dividends.

The Sacramento Valley Telephone Company will have in addition the earnings attributable to those portions of The Pacific Telephone and Telegraph Company's system which it will acquire in Glenn and Tehama counties.

The Sacramento Valley Telephone Company has been incorporated with an authorized stock issue of 5,000 shares of the par value of \$100 per share, or a total par value of \$500,000. It has an authorized issue of \$500,000 face value first mortgage 6 per cent. twenty-year gold bonds.

It is now proposed in this application that Sacramento Valley Telephone Company shall issue \$193,500 par value of stock consisting of 1,935 shares and \$193,000 face value of bonds.

The stock is to be sold or delivered as follows:

- \$125,000 par value to be sold to The Pacific Telephone and Telegraph Company at par for cash.
- 65,000 par value to be delivered to The Pacific Telephone and Telegraph Company as part payment for property.
- 2,000 par value to be delivered to Glenn County Telephone Company as part payment for property.
- 1,500 par value to be delivered to Tehama County Telephone Company as part payment for property.

The cash received from the sale of this stock will be used by Sacramento Valley Telephone Company as follows:

\$68,000 to pay in part for property of Glenn County Telephone Company.

\$43,500 to pay in part for property of Tehama County Telephone Company.

10,500 to pay note due The Pacific Telephone and Telegraph Company for moneys advanced.

3,000 to be retained for working capital.

The Sacramento Valley Telephone Company proposes to issue the \$190,000 face value of bonds as follows:

\$ 13,000 face value to Glenn County Telephone Company.

12,000 face value to Tehama County Telephone Company.

165,000 face value to The Pacific Telephone and Telegraph Company.

\$190,000

It appears, therefore, that for the property of Glenn County Telephone Company, which is appraised by the applicants at \$114,960.69, Sacramento Valley Telephone Company proposes to pay \$88,000 in cash, bonds and stock, as follows:

Cash from sale of stock.....	\$68,000 00
Cash deposited as guarantee.....	5,000 00
Bonds, face value.....	13,000 00
Stock, par value.....	2,000 00

For the properties of Tehama County Telephone Company, which the applicants appraise at \$66,797.15, Sacramento Valley Telephone Company proposes to pay \$62,000 in cash, bonds and stock as follows:

Cash derived from sale of stock.....	\$43,500 00
Cash deposited as guarantee.....	5,000 00
Bonds, face value.....	12,000 00
Stock, par value.....	1,500 00

For the properties of The Pacific Telephone and Telegraph Company, which applicants appraise at \$226,226.76, the Sacramento Valley Telephone Company proposes to pay \$230,000 in stock and bonds as follows:

Bonds	\$165,000 00
Stock	65,000 00

It was stated in testimony that the negotiations looking to the consummation of this transaction were conducted by Mr. F. H. Crosby, a broker, who was to receive as part of his compensation \$3,500 par value of stock of Sacramento Valley Telephone Company. This stock will be paid:

\$2,000 by Glenn County Telephone Company, and
1,500 by Tehama County Telephone Company.

The result, therefore, will be that of the \$193,500 par value of stock proposed to be issued by Sacramento Valley Telephone Company, \$190,000 will be owned by The Pacific Telephone and Telegraph Company and \$3,500 by Mr. Crosby.

Of the bonds to be issued by Sacramento Valley Telephone Company, \$165,000 will be issued to The Pacific Telephone and Telegraph Company and the remaining \$25,000 will be held by Glenn County Telephone Company and Tehama County Telephone Company, with the exception of a small amount to be given to Mr. Crosby as part of his commission.

It is apparent, therefore, that the control of Sacramento Valley Telephone Company will be lodged with The Pacific Telephone and Telegraph Company. In fact the relationship will be such that Sacramento Valley Telephone Company may be considered in reality a subsidiary corporation of The Pacific Telephone and Telegraph Company.

While the applicants have appraised the property of Glenn County Telephone Company at \$114,960.60, it is intended that it pass into the possession of Sacramento Valley Telephone Company for a consideration of \$88,000. The representatives of The Pacific Telephone and Telegraph Company stipulated at the hearing that if the authorization here applied for were granted, no claim would henceforth be made for a valuation for rate-fixing purposes of the properties of Glenn County Telephone Company beyond the sum of \$88,000 paid therefor.

A stipulation was also made as to the properties of Tehama County Telephone Company which were appraised

at \$66,797.15 by the applicants and which, it is proposed, shall pass into the possession of Sacramento Valley Telephone Company for the consideration of \$62,000. This stipulation was to the effect that hereafter no claim should be advanced for the values upon these properties for rate-fixing purposes beyond the sum of \$62,000 paid therefor.

The Glenn County Telephone Company has heretofore reported 966 subscribers and the Tehama County Telephone Company 645 subscribers. The Pacific Telephone and Telegraph Company has reported approximately 1,600 additional subscribers in Glenn and Tehama counties. The consolidated corporation, therefore, in the form of Sacramento Valley Telephone Company, would have approximately 3,000 subscribers. The estimate of the applicants is 3,090 subscribers. A summary has been prepared by the applicants estimating, on the basis of the present earnings of the three companies in Glenn and Tehama counties, gross annual revenues for the consolidated properties of \$56,818.81 for the calendar year 1914. The total is made up as follows:

Exchange Revenues	\$47,160 60
Interexchange Revenues	9,658 21

The applicant submits a statement showing the estimated value and capitalization per station as follows:

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY.
STATEMENT FOR GLENN AND TEHAMA COUNTIES SHOWING AVERAGE
PLANT PER EXCHANGE STATION

	Present value	Stations	Average per station	Selling price	Stations	Average per station
Pacific company	\$226,226 76	1,627	\$139 05	\$230,000 00	1,627	\$141 36
Glenn County company	\$114,960 69	835	134 46			
Tehama County company	66,797 15	608	109 80			
	\$181,757 84	1,463	\$124 2	\$150,000 00	1,463	102 53
	\$407,984 60	3,090	\$132 05	\$380,000 00	3,090	\$122 98
Organization expense				100 75		
Working capital				3,390 25		
Stock and bonds				\$383,300 00	3,090	\$124 11

On the data submitted by the applicant, therefore, it would appear that the capitalization per station would be \$124.11. On the estimate of \$56,818 for the gross revenues, gross earnings per station would amount to \$18.38. This will call for an average telephone rate of approximately \$1.50 per station. With a capitalization of \$383,500, figured at 6 per cent., the applicant would be required to earn net \$23,010, or \$7.44 per station. This will leave an average of \$10.94 for operating expenses, depreciation and taxes.

The attention of the applicant was directed at the hearing to the fact that although an effort has been made to eliminate certain features of The Pacific Telephone and Telegraph Company's plant from consolidation, there would nevertheless remain in the consolidated company's hands certain duplicate facilities not useful to the system at this time. The applicants stated that such duplication features as remain, including exchange lines, poles and facilities, would gradually be welded into the unified system. However, the applicants volunteered that such duplication as might now be found to exist would be absorbed by The Pacific Telephone and Telegraph Company through its ownership of stock of the Sacramento Valley Telephone Company. The statement was made that The Pacific Telephone and Telegraph Company proposed to retain and not to dispose of the stock of Sacramento Valley Telephone Company. Mr. Crosby, who was also present at the hearing and who will be the only other stockholder of Sacramento Valley Telephone Company, stated he was willing to take his chances with The Pacific Telephone and Telegraph Company in the understanding that such duplication as might remain in the consolidated plant would, in the last analysis, be chargeable against the stock.

I, therefore, deem it unnecessary to make a detailed investigation into the estimates of value here presented. I am of the opinion, however, that the estimates submitted are subject to revision in certain particulars.

In the proposed consolidation all of the franchises now held by Glenn County Telephone Company and Tehama

County Telephone Company are to be transferred to Sacramento Valley Telephone Company. The franchises now owned by The Pacific Telephone and Telegraph Company in Glenn and Tehama counties are not to be transferred to Sacramento Valley Telephone Company.

The Pacific Telephone and Telegraph Company is operating under special franchises in Willows and Red Bluff. Under the terms of the Willows franchise of The Pacific Telephone and Telegraph Company, it is obligated to give certain free service for the benefit of the town. No such obligation is imposed upon Glenn County Telephone Company in its Willows franchise.

As contemplated, therefore, Sacramento Valley Telephone Company will be under only those obligations in Willows which are imposed in the franchise of Glenn County Telephone Company.

The Pacific Telephone and Telegraph Company will cease to operate locally in Willows and, therefore, the free service heretofore given to the town of Willows will be discontinued.

Applicants stated that they would submit this question to the town authorities of Willows and such authorization as may hereafter be given for the transfer of the franchise in Willows to the Sacramento Valley Telephone Company will be conditioned upon the prior approval of such transfer by the town authorities of Willows.

The franchise under which Sacramento Valley Telephone Company will operate are for a term of fifty years and the first maturity will be in 1956.

No unusual obligations are imposed in any of these franchises, with the exception of the franchise at Corning. This franchise assumes to fix the rates which shall be charged to subscribers.

All of the franchises contain the usual provision of the Broughton Act, providing for the annual payment of 2 per cent. of the gross receipts after five years.

The bonds to be issued by Sacramento Valley Telephone Company will mature twenty years from date. The pro-

posed deed of trust to secure these bonds has been submitted, but it is indefinite in several respects and approval will, therefore, be withheld until it is made definite and clear.

It was stipulated at the hearing that Sacramento Valley Telephone Company would assume all contract obligations for connecting telephone service in Glenn and Tehama counties now binding upon any of the three companies to be consolidated.

The American Telephone and Telegraph Company, which controls The Pacific Telephone and Telegraph Company, has heretofore entered into an agreement with the attorney general of the United States, wherein it stipulates that —

“Neither the American Telephone and Telegraph Company nor any other company in the Bell system will hereafter acquire directly or indirectly, through purchase of its physical property or of its securities or otherwise, dominion or control over any other telephone company owning, controlling or operating any exchange or line which is, or may be, operated in competition with any exchange or line included in the Bell system; or which constitutes, or may constitute, a link or portion of any system so operated, or which may be so operated, in competition with any exchange or line included in the Bell system.”

Attached to this stipulation is the provision —

“*Provided*, however, that where control of the properties or securities of any other telephone company heretofore has been acquired and is now held by or in the interest of any company in the Bell system, and no physical union or consolidation has been effected, or where binding obligations for the acquisition of the properties or securities of any other telephone company heretofore has been entered into by or in the interest of any company in the Bell system, and no physical union or consolidation has been effected, the question as to the course to be pursued in such cases will be submitted to your department (meaning the Department of Justice at Washington) and to the Interstate Commerce Commission for such advice and directions, if any, as either may think proper to give, due regard being had to public convenience and to the rulings of local tribunals.”

The applicants stated that negotiations had been pending for the consolidation herein proposed for a period of five years, that the matter had been referred to the attorney

general at Washington and that he had directed applicants to bring the matter to his attention after they had obtained a ruling on the proposed consolidation from the Railroad Commission of California.

This Commission will be confined, of course, in its findings to those matters over which it has jurisdiction within the State of California.

We are confronted, therefore, with the proposal that these telephone systems in Glenn and Tehama counties, heretofore in competition, be allowed to merge. In other words, this is an application to substitute a regulated monopoly for a competitive service. The testimony offered by the three companies proposing to merge is uniformly to the effect that each has found the business unprofitable—due to competition. It is agreed that there has not been sufficient business in each county to enable two competitive companies to make a profit, but there is sufficient business in the two counties to enable one consolidated company to make an adequate earning. This testimony is borne out by the records.

Neither the Glenn county company nor the Tehama county company has been able to do much more than meet its bare expenses without even a proper allowance for depreciation, and there has been no return upon the stock investment.

The Pacific Telephone and Telegraph Company also reports that its business in these two counties has been unprofitable.

We may assume, therefore, that the competitive condition has been unfortunate in its effect upon the three companies concerned, and that a continuance of this competitive condition will further accentuate this disadvantageous condition. It is possible, of course, that in the long run the two weaker and smaller companies would be forced out of business by the strongest among them.

We have, therefore, to consider the effect of the proposed consolidation upon the public; to determine the public interest as between the competitive condition and the pro-

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posed condition of regulated monopoly. The interest of the public goes directly to the rates and to the service.

Petitions from the boards of supervisors, town trustees and chambers of commerce of Glenn and Tehama counties have been filed with this Commission requesting that the authorization to merge those telephone plants as herein requested be granted.

The companies involved have not been able to serve their patrons at the present rates at a profit and it would certainly follow that a continuation of the loss would mean a curtailment and depreciation of service.

Competitive service means duplication of facilities and the greater the competition the greater the duplication. These subscribers are, of course, under necessity to pay a return upon this duplicated property when a single facility would serve the whole purpose. In fact, it appears in this case that there are 696 duplicate services in the two counties. Therefore, these subscribers to the number of 696 are paying double rates, once to The Pacific Telephone and Telegraph Company and again to either the Tehama County Telephone Company or the Glenn County Telephone Company to obtain a service which it is herein proposed that the single agency in the form of the Sacramento Valley Telephone Company shall perform.

It has been stipulated in this proceeding that the present rates shall remain in force for the present. Thereafter certain adjustments will be required to remove the discriminations which may now exist. It would appear, therefore, that the consolidation will, for the present mean no change in the rate schedule, but will serve to relieve those who are now paying the double rates by reason of the fact that they are subscribers to the two telephone systems.

The annual sum paid for these duplicate services by the companies' subscribers is estimated at \$12,000.

It further appears that the losses of the three companies would probably occasion some readjustment of rates in the near future in order that they might continue to give service. It is furthermore apparent that the total to be paid in

rates by the subscribers in these two counties to the three companies will in any arrangement be greater than the total amount to be paid to a single company which may be substituted to perform the same service.

It is clear that the proposed consolidation should lead to a great improvement in the telephone service rendered in these two counties. At present, subscribers on the lines of the Tehama County Telephone Company and the Glenn County Telephone Company have not the privilege of interchange toll switching with The Pacific Telephone and Telegraph Company. They are required to use The Pacific Telephone and Telegraph Company for long distance service. Under the proposed consolidation, Sacramento Valley Telephone Company will handle all of the toll business located wholly within the two counties of Glenn and Tehama and will have interchange service at the customary rates established for independent companies with The Pacific Telephone and Telegraph Company for messages to and from points outside of Glenn and Tehama counties. Moreover, the new company, Sacramento Valley Telephone Company, if this plan is approved, will be in such financial position and will have such financial support that it should be able to render a high class of service to its patrons.

Certain farmer line companies now having connection with either the Glenn or Tehama counties will be protected in these connections by the Sacramento Valley Telephone Company.

In view of all of these facts, I recommend that the application be granted, and I accordingly submit the following form of order:

ORDER.

Glenn County Telephone Company and Tehama County Telephone Company having applied to this Commission for authority to sell their telephone plants and to transfer their franchises to Sacramento Valley Telephone Company, and The Pacific Telephone and Telegraph Company having requested authority to transfer certain of its telephone properties located in Glenn and Tehama counties to Sacramento

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Valley Telephone Company, and Sacramento Valley Telephone Company having applied to this Commission for authority to issue \$193,500 par value of stock and \$190,000 face value of its twenty-year six per cent. first mortgage bonds; and Sacramento Valley Telephone Company having applied for authority to execute a mortgage and deed of trust to secure said issue of bonds, and The Pacific Telephone and Telegraph Company having applied to this Commission for authority to acquire \$190,000 par value of stock of Sacramento Valley Telephone Company;

And a hearing having been held, and the Commission being fully advised in the premises, and it appearing that the public interest will be served by granting the application as herein made;

And it appearing further that the stock and bonds which Sacramento Valley Telephone Company herein requests authority to issue are not in whole or part reasonably chargeable to operating expenses or to income;

It is hereby ordered as follows:

That Glenn County Telephone Company be granted authority, and it is hereby granted authority, to transfer to Sacramento Valley Telephone Company its telephone properties as listed in "Exhibit F," filed in connection with the application herein;

That Glenn County Telephone Company be granted authority, and it is hereby granted authority, to convey to Sacramento Valley Telephone Company its franchises heretofore granted by the county of Glenn and the town of Willows for the operation of a telephone system in Glenn county;

That Tehama County Telephone Company be granted authority, and it is hereby granted authority, to transfer to Sacramento Valley Telephone Company its telephone properties as listed in "Exhibit H," attached to the application herein;

That Tehama County Telephone Company be granted authority, and it is hereby granted authority, to transfer to Sacramento Valley Telephone Company its franchises for

the operation of a telephone system heretofore granted by the county of Tehama and the towns of Tehama, Red Bluff and Corning;

That The Pacific Telephone and Telegraph Company be granted authority, and it is hereby granted authority, to transfer to Sacramento Valley Telephone Company its telephone properties in Glenn and Tehama counties, as listed in "Exhibit J," attached to the application herein;

That Sacramento Valley Telephone Company be granted authority, and it is hereby granted authority, to issue 1,935 shares of its capital stock of par value of \$100 per share, or a total par value of \$193,500;

That Sacramento Valley Telephone Company be granted authority, and it is hereby granted authority, to issue \$190,000 of its first mortgage 6 per cent. twenty-year bonds;

That Sacramento Valley Telephone Company be granted authority, and is hereby granted authority, to execute a mortgage and deed of trust to secure said issue of bonds after this Commission shall have issued a supplemental order approving the form of deed of trust herein authorized to be issued;

That The Pacific Telephone and Telegraph Company be granted authority, and it is hereby granted authority, to acquire 1,900 shares of the capital stock of the Sacramento Valley Telephone Company of the par value of \$100 per share, or a total value of \$190,000;

The authority herein granted is granted upon the following conditions and not otherwise:

- (1). Glenn County Telephone Company, Tehama County Telephone Company and The Pacific Telephone and Telegraph Company shall give to Sacramento Valley Telephone Company a good and sufficient deed for the properties herein authorized to be transferred;
- (2). The franchise granted by the town of Willows to Glenn County Telephone Company herein authorized to be transferred to Sacramento Valley Telephone Company shall be transferred only after such trans-

fer shall have been approved by the public authorities of the town of Willows and after this Commission shall have issued a supplemental order approving such transfer;

- (3). The authority herein granted to Glenn County Telephone Company and Tehama County Telephone Company to convey franchises in Glenn and Tehama counties to Sacramento Valley Telephone Company shall be effective only after Sacramento Valley Telephone Company shall have filed a stipulation with this Commission to the effect that it shall agree that the value to be placed upon said franchises in any rate fixing proceeding, or any purchase or condemnation by public authority, shall be a sum not in excess of the original cost of said franchises;
- (4). The authority herein granted to Sacramento Valley Telephone Company to issue stock is granted upon the following conditions and not otherwise:

(a). 1,250 shares of said stock shall be sold to The Pacific Telephone and Telegraph Company at par for cash;

(b). 650 shares of par value of said stock shall be sold to The Pacific Telephone and Telegraph Company as part payment for the properties to be transferred;

(c). 20 shares of said stock shall be delivered to Glenn County Telephone Company as part payment for the properties to be transferred;

(d). 15 shares of said stock shall be delivered to Tehama County Telephone Company as part payment for the properties to be transferred;

(e). The cash received from the sale of said stock shall be used by Sacramento Valley Telephone Company as follows:

1. In part payment for property of Glenn County Telephone Company	\$68,000 00
2. In part payment for property of Tehama County Telephone Company.....	43,500 00
3. In part payment of note due The Pacific Telephone and Telegraph Company for funds advanced	10,000 00
4. To be retained for working capital.....	3,000 00

TOTAL \$124,500 00

- (5). The bonds herein authorized to be issued by Sacramento Valley Telephone Company shall be issued for the following purposes, and not otherwise:

(a). \$13,000 face value of said bonds shall be issued to Glenn County Telephone Company in part payment for the properties to be transferred;

(b). \$12,000 face value of said bonds shall be issued to Tehama County Telephone Company in part payment for the properties to be transferred;

(c). \$165,000 face value of said bonds shall be issued to The Pacific Telephone and Telegraph Company in part payment for the properties to be transferred.

- (6). Sacramento Valley Telephone Company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of the stock and bonds hereby authorized to be issued; and on or before the twenty-fifth day of each month the company shall make verified reports to the Commission stating the sale or sales of said bonds and notes during the preceding months, the terms and conditions of the sale, the moneys realized therefrom, and the use and application of such moneys, all in accordance with this Commission's General Order No. 24,* which order, insofar as applicable, is made a part of this order.

- (7). The authority herein given shall apply to such stock and bonds as shall have been issued and sold on or before June 30, 1916.

- (8). The authority herein given is conditioned upon the payment of the fee prescribed under the Public Utilities Act as amended.

- (9). Sacramento Valley Telephone Company shall assume all contracts and obligations for telephone service binding upon Glenn County Telephone Company, Tehama County Telephone Company and The Pacific Telephone and Telegraph Company in Glenn and Tehama counties, with the exception of service in Tehama County from the exchange of The Pacific

*See Commission Leaflet No. 9, p. 82.

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Telephone and Telegraph Company at Cottonwood, Shasta County; and the toll service of The Pacific Telephone and Telegraph Company to and from points outside of said counties.

- (10). The authority herein granted as to the transfer of property, the transfer of franchises, the issue of stock and bonds and the acquisition of stock shall be effective only after this Commission shall have issued a supplemental order finding that the applicants herein have complied with all the conditions herein set out.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this eighth day of July, 1915.

IN THE MATTER OF THE APPLICATION OF THE OLETA TELEPHONE COMPANY FOR PERMISSION TO CHARGE A FEE FOR MESSAGES SENT OVER THE LINE OF THE OLETA TELEPHONE COMPANY.

Application No. 1627 — Decision No. 2608.

Decided July 16, 1915.

Authority to Establish Charge in Addition to Regular Switching Rate for Rural Switching Service Denied.

Applicant sought authority to put into effect a charge of 15 cents for all calls originating and terminating on its own lines and a charge of 25 cents for all calls originating on its lines and terminating on the lines of the Pacific company or originating on the lines of the Pacific company and terminating on its lines.

The Oleta Telephone Company had purchased a farm line connected with the Plymouth exchange of the Pacific company. The Pacific company performed switching service for the applicant and charged its regular rates therefor. The payment of this rate entitled the subscribers of the applicant to connection with all other subscribers of the Plymouth exchange.

Applicant sought to put into effect the charges set out above in order to provide revenue with which to meet operating and maintenance charges and to enable it to collect from non-subscribers who used its line.

Held: That the rates paid for rural switching service are presumed to be sufficiently lower than the rates charged for service where the company provides the equipment and maintains the line, to fully offset the operating and maintenance charges and to pay a return upon the investment and equipment.

That the trouble experienced by non-subscribers using the lines can be remedied by subscribers refusing to allow non-subscribers to talk from their telephones.

That the proposed charge would unjustly increase the rates for telephone service and deny the subscribers the privileges to which the Pacific company's present rates entitle them and would also cause each telephone connected with the applicant's line to become a public telephone regardless of the wishes of the subscriber in whose premises the telephone was located.

APPEARANCES:

Charles Bloom and Joseph Pigeon, for the applicant.

James T. Shaw, for The Pacific Telephone and Telegraph Company.

OPINION.

GORDON, *Commissioner*:

The Oleta Telephone Company, the applicant in this proceeding, purchased what is commonly known as a farmer telephone line from the Volcano Telephone Company in April, 1913. The line extends from Oleta and the country district adjacent to Oleta, to Plymouth in Amador County, and is connected at the latter point with a central exchange which is owned and operated by The Pacific Telephone and Telegraph Company. The Oleta Telephone Company has no central exchange or switchboard of its own. There are now twenty telephones in use on the line, each receiving switching service through this connection with the Plymouth exchange for which the Pacific company charges the rate ordinarily charged by it at all of its similar exchanges for farmer line service.

The Oleta Telephone Company is not an incorporated company. To all intents and purposes its members are subscribers of The Pacific Telephone and Telegraph Company, as fully entitled, under the rates which that company charges, to service with all other subscribers of the Plymouth exchange without the payment of any additional

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charge as they would be if they were located in Plymouth and were connected with that company's exchange lines. In other words, the rates which The Pacific Telephone and Telegraph Company charges for their present service entitles them to the same Plymouth exchange switching privileges that all other Plymouth subscribers have.

In its application the Oleta Telephone Company asks the Commission to allow it to put into effect a charge of 15 cents for all calls originating and terminating on its own line, and a charge of 25 cents per call for all calls originating at any of its twenty stations and terminating at Plymouth, and a charge of 25 cents per call for all calls originating on The Pacific Telephone and Telegraph Company's lines and terminating on the applicant's line. The purpose of the applicant in desiring to make these charges, as stated at the hearing, is to provide revenue with which to help meet operating and maintenance charges and to enable it to collect from those who are not members of the company and who make use of the line; for service which they now get without any compensation whatever to the company.

So far as operating and maintenance charges are concerned, it may be observed that not only in the case of this applicant, but also in the case of many other owners of farmer lines similarly owned and operated, the rates which its members pay for their service are presumed to be sufficiently lower than they would be required to pay for service of other classes in connection with which the company furnishing the service provides the necessary investment in equipment and bears the maintenance and operating charges, to fully offset those charges and to pay them interest on their investment. In other words, the difficulties with which this company believes itself to be confronted and which it is seeking to overcome by imposing an additional burden upon its members are presumed to be taken care of by the low rates afforded for farmer line service. As to the matter of the use of its line by those who are not members of the company and who have contributed nothing toward the cost of the line, there is apparently nothing to

prevent its members refusing the use of their telephones in such cases if they desire to do so.

The situation involved in this case is not an uncommon one in the experience of telephone companies of this character, but to grant permission to impose such charges in such cases would result not only in unjustly increasing the charges for telephone service, and in this particular case in denying the members of the applicant company the privileges to which the Pacific company's present rates entitle them, but would also have the further effect of constituting each telephone connected with such lines a public telephone toll station at all times subject to public use regardless of location and regardless of the wishes of the party in whose premises the station may be located. The reasonableness of the Pacific company's rates for this service are not at issue in this proceeding, but if they are proper rates for the service involved, to permit the former result would be unjust and unreasonable, and it is plain that this Commission cannot require private property to be devoted to the public use. I am accordingly of the opinion that this application should be denied and shall so recommend to the Commission.

I submit the following form of order :

ORDER.

Application having been made to this Commission by the Oleta Telephone Company, a farmer telephone company, for permission to charge certain rates for messages passing over its line to and from Plymouth, Amador County, and for all messages originating and terminating on its line, and a public hearing having been held, and it appearing to the Commission, as set forth in the preceding opinion, that said application should be denied,—

It is hereby ordered, That the application herein be, and it is hereby, denied.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this sixteenth day of July, 1915.

FLORIDA.

Railroad Commissioners.

IN THE MATTER OF THE RATES AND PRACTICES OF THE MIAMI TELEPHONE COMPANY.

Dated July 3, 1915.

**Increase in Rates Denied — Additional Charge of \$12.00 per Year For
Desk Sets Held Unreasonable; Charge of \$3.00 per Year Per-
mitted — Charge for Extension of Lines to Furnish
Service to Prospective Subscribers Within
City Condemned.**

INFORMAL RULING.

“ We have your favor of June sixteenth, in reply to ours of May twenty-fourth, with reference to an additional charge of \$12.00 a year for desk sets, and note that you enclose rate sheet for the approval of the Commissioners, to take effect August 1, raising all rates, whether desk or wall, to conform to your former rates on desk sets, which has the effect of raising all wall sets \$12.00 a year.

“ This is to advise you that the Commission will not approve this rate sheet, but shall expect the maintenance of your present schedule of rates, with the exception that we disapprove the charge of \$12.00 a year for desk sets, and insist upon only a \$3.00 additional charge being made for this class of service, as \$3.00 a year amply covers additional investment, cost of maintenance and probable use of telephone, and allows a reasonable return upon same.

“ Some months ago, the Commission handled with you complaint of Mrs. W. L. Botsford, the matter of charging her for the construction of a line to enable you to install a telephone in her residence. We advised you at that time that we would not agree to this requirement.

“ We now notice a complaint in *The Miami Metropolis* of July 1, of the Riverside Improvement Association,

against the practice of compelling subscribers to pay for an extension of your line, in order to get telephone connection. We wish to advise you now, that the Commissioners will not approve of the assessment of your subscribers for the cost of extensions of your line, in order that they may be served with telephone connections within the city limits in Miami.

“ We shall expect an immediate reply to this letter, advising what you will do with respect to compliance.” *

* Letter of R. Hudson Burr to Miami Telephone Company, July 3, 1915.

ILLINOIS.

State Public Utilities Commission.

NOBLE TELEPHONE COMPANY *et al.* v. NOBLE MUTUAL TELEPHONE COMPANY.

Decision of Circuit Court Affirmed — Commission's Order Sustained.

On June 24, 1915, the Supreme Court of Illinois affirmed the decision of the circuit court of Sangamon County (see Commission Leaflet No. 38, p. 651) sustaining the decision of the Commission (see Commission Leaflet No. 36, p. 261) that the Noble Mutual Telephone Company was a public utility. (109 N. E. 298.)

DANIELS TELEPHONE COMPANY v. PEOPLE'S TELEPHONE COM- PANY OF SOUTHERN ILLINOIS.

Case No. 3528.

Decided June 30, 1915.

Certificate of Public Convenience and Necessity Not Required of Com- pany Which Had Been Operating a Switchboard Prior to the Passage of the Public Utilities Act, Although Oper- ation Had Been Temporarily Suspended.

The petitioner sought an order directing the respondent to cease the construction and operation of a telephone exchange in the village of Xenia until it should obtain a certificate of public convenience and necessity from the Commission.

From 1910 to 1912 both the petitioner and the respondent were operating telephone switchboards in Xenia, but in June, 1912, the parties made an agreement whereby the complainant was to switch the respondent's lines at Xenia. This arrangement was in effect on January 1, 1914, when the Public Utilities Act became effective. In September, 1914, because of a disagreement, the existing arrangement was terminated; from September, 1914, to January, 1915, negotiations were had between the parties with a view to settling their differences, but as no agreement was reached, the respondent on January 7, 1915, again put into operation its switchboard at Xenia and connected therewith the lines owned or

controlled by it. When operation was discontinued in 1912, nothing was done that would indicate that the respondent intended to abandon its property or permanently cease to operate in the village.

Held: That although the Commission is opposed to duplication of telephone systems in any community where the utility already operating is furnishing adequate service at reasonable rates, yet it cannot arbitrarily drive out of business one of two telephone companies where both were constructed and used, or ready to be used, for the transmission of telephone messages at the time the act creating the Commission went into effect.

That the operation, in January, 1915, by the respondent of its telephone system in the village of Xenia was not the construction of a new plant of the character that requires the utility to obtain a certificate of public convenience and necessity from the Commission.

OPINION AND ORDER.

The petition as amended in this case sets forth that the petitioner, the Daniels Telephone Company, is a corporation engaged in the telephone business with the principal place of business at Iuka, Illinois; that it operates telephone exchanges in the villages of Iuka, Xenia, Louisville and Cisne, Illinois; that it is a public utility subject to the jurisdiction of this Commission.

Said amended application further sets forth that the respondent, People's Telephone Company of Southern Illinois, is a corporation engaged in the telephone business with its principal place of business at Rinard, Illinois, and subject to the jurisdiction of this Commission; that said respondent has since February 13, 1915, commenced the construction of a new telephone exchange in the said village of Xenia; that it has never obtained from this Commission a certificate of convenience and necessity authorizing it to construct said exchange, as required by Section 55 of "*An Act to Provide for the Regulation of Public Utilities*" now in force in this State.

The petitioner prays that an order be entered directing said respondent to cease the construction and operation of a telephone exchange in said village until such time as it may have obtained from this Commission a certificate of convenience and necessity, and for such further relief as to the Commission may seem meet.

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The respondent company filed an answer in which it denied that it is attempting to establish a new or additional telephone system or exchange at Xenia, but on the contrary avers that it now is, and has since the year 1903 been, operating a telephone system in said village under a franchise ordinance granted to it by the village of Xenia in 1903. A certified copy of said ordinance is attached to and made a part of the answer.

A hearing was held at the office of the Commission at Springfield on May 4, 1915. *C. F. Berry* and *Ben Boynton* attorneys, appeared for the petitioner. *James H. Smith*, attorney, represented the respondent.

The record in this case shows that the petitioner owns and operates a telephone exchange at Xenia, which has been in operation at that point since about 1900; that in the year 1905 the respondent constructed a telephone line and also installed and commenced the operation of a switchboard within the village of Xenia under and by virtue of a franchise ordinance granted by said village August 24, 1903. To the respondent's said exchange or switchboard was connected the telephone line constructed within the village as aforesaid, and also several rural lines. The respondent continued the operation of said telephone exchange until 1906, at which time an arrangement was made with the Daniels Telephone Company whereby the lines of the respondent company were connected with the exchange of the complainant at Xenia and were furnished switching service by the latter company. This arrangement lasted until about January, 1910, when the respondent company appears to have become dissatisfied. It thereupon disconnected its telephone lines from the complainant's exchange and re-connected them to its own switchboard which it had formerly used at Xenia. It then began the operation once more of its own telephone exchange in that village and continued so to do for the following two and one-half years.

In June, 1912, the respondent appears to have again discontinued the operation of its own telephone exchange at Xenia and to have made a reciprocal arrangement with the

complainant herein whereby the latter was to switch the respondent's lines at Xenia, and in return the respondent agreed to render a like service to the complainant at Cisne. This arrangement was terminated in September, 1914, on account of some difference that had theretofore arisen between the two companies and which appeared to have resulted in the Daniels company installing and operating a switchboard of its own at Cisne.

From September, 1914, to January, 1915, negotiations were had between the parties herein with a view to a settlement of their differences, but as no adjustment was reached the respondents on January 7, 1915, again put into operation in the village of Xenia its own switchboard, to which it connected the lines owned and controlled by it.

From the time the respondent discontinued operation of its own switchboard in 1912, until it re-installed and put same into operation in January, 1915, the telephone line owned or controlled by it in the village of Xenia was not in operation. When that line was again connected with the respondent switchboard in January, 1915, some repairs were required before it could be put into operation.

The record in this case shows that on January 1, 1914, the property of the respondent company located within the village of Xenia consisted of one pole line with cross arms and wires thereon and with several telephones connected thereto; also of a switchboard which was located in a private residence. At that time neither the telephone line nor the switchboard above mentioned were in operation.

The contention of the complainant is that the respondent company had no right to re-install said switchboard nor to again put it into operation, nor to again put into operation said telephone line and the telephones connected thereto within the village of Xenia, without first securing a certificate of convenience and necessity from this Commission. This contention is based upon Section 55 of the State Public Utilities Commission Law, which reads in part as follows:

"No public utility shall begin the construction of any new plant, equipment, property or facility which is not in substitution of any existing plant, equipment, property or facilities or in extension thereof or in addi-

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tion thereto, unless and until it shall have obtained from the Commission a certificate that public convenience and necessity require such construction.

No public utility not owning any city or village franchise nor engaged in performing any public service or in furnishing any product or commodity within this State at the time this Act goes into effect shall transact any business in this State until it shall have obtained a certificate from the Commission that public convenience and necessity require the transaction of such business."

The complainant insists that the question of the right of the respondent to commence in the early part of 1915 the operation of a telephone system in Xenia cannot be based upon the fact that it was at that time operating several rural lines that extended into said village. We concede this proposition to be sound and so held in the case of *Pike County Telephone Company v. Noble** et al., No. 2660.

However, the facts in this case are different from the facts in the *Pike County* case, *supra*, in several material respects.

In the latter case several individuals were seeking in June, 1914, to construct and operate a telephone exchange and system within the village of Perry, Illinois, without a certificate of convenience and necessity from this Commission. The franchise ordinance under which they proposed to operate was granted them after January 1, 1914, the date the State Public Utilities Commission Law went into effect. On the latter date they had no franchise ordinance authorizing them to do business in the village of Perry. They had no switchboard located in the village. They had no telephone lines nor telephones within the village, and in order to do a local business in said village it would be necessary for them to secure a franchise ordinance, construct telephone lines, install telephone instruments and also install a switchboard and connect said lines and telephones thereto before operation could be commenced.

In the case under determination, on January 1, 1914, and also in January, 1915, when respondent commenced operation in Xenia, it had a twenty-year franchise ordinance which was granted by the village of Xenia in 1903 and

* See Commission Leaflet No. 36, p. 272.

which, so far as this record shows, was still in full force and effect. It had a pole line with cross arms thereon and with telephone wires suspended therefrom. These telephone wires were connected with a switchboard owned by the respondents which was located in a private residence. It also had several telephones installed in various places of business in Xenia which were connected with said switchboard by means of said telephone wires. This telephone system had been in service for several years and at the time its operation was discontinued in 1912 nothing appears to have been done by the respondent that would indicate in any way that it intended to abandon this property or to permanently cease operations in the village. In fact quite the contrary appears to be the case. The poles and wires were left intact, most of the telephones were left installed and continued to be connected with the switchboard which remained in the place where it had been in operation, until about January, 1915, when it was removed to a different location and its operation re-commenced.

While this Commission is opposed to the duplication of the property of a telephone system in any community where the utility already operating is furnishing adequate service at reasonable rates, yet it has no power to arbitrarily drive out of business one of two telephone companies where both were constructed and used or ready to be used for the transmission of telephone messages at the time the act creating this Commission went into effect. It seems clear that any such deprivation of property or the use of property, as would necessarily result if the contention of the complainant in this case were adopted, is not justified by the language of Section 55 of the act referred to above.

The Commission, therefore, finds that the operation in January, 1915, of the telephone system of the respondent company in the village of Xenia, Illinois, under the facts and circumstances of this case is not the construction of a new plant, equipment or property within the meaning of Section 55 of an act entitled "*An Act to Provide for the Regulation of Public Utilities,*" of the character that re-

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quires a certificate of convenience and necessity from this Commission.

It is, therefore, ordered, That the complaint in this case be, and the same is hereby dismissed.

By order of the Commission this thirtieth day of June, 1915, dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF THE COMMERCIAL
TELEPHONE AND TELEGRAPH COMPANY OF OLNEY, ILLI-
NOIS, FOR AUTHORITY TO CHANGE RATES AT FLORA,
ILLINOIS.

Case No. 2508.

Decided July 1, 1915.

Schedule of Rates Fixed Pending Final Adjudication.

Applicant sought approval of a schedule of rates which it had put into effect January 1, 1914. This schedule involved certain increases, but because of a misunderstanding of the provisions of the Public Utility Law, the applicant had failed to secure the Commission's consent. The new rates would not produce any revenue in excess of that required for operating expenses, maintenance, reserve for depreciation and reasonable return on investment. Objection to the increase was made and it became necessary for the Commission to consider the value of the property of the applicant. As a final decision could not be made until the Commission had heard further testimony bearing on the intangible elements of value claimed by the applicant, and as many of the subscribers had withheld payment of rentals and toll charges pending the Commission's decision, thereby financially embarrassing the company, the Commission issued an order fixing a temporary schedule of rates. This schedule was fixed on the basis that the service furnished was grounded service, the Commission being of opinion that the presence of a few metallic lines could not materially raise the quality of the service, and that consequently the schedule for metallic circuit service should not be effective until all the grounded circuits were replaced by metallic circuits.

OPINION AND ORDER.

Application in the above entitled matter sets forth that the petitioner is a public utility engaged in the management and operation of a general telephone system south-

eastern Illinois, consisting of local exchanges and connecting toll lines, with its principal place of business at Olney, Illinois; that prior to January 1, 1914, certain differences or discriminations existed in the rates in effect at Flora, Illinois, and that in order to eliminate such discriminations a new rate schedule was put into effect January 1, 1914.

The rates in force and effect at Flora, July 1, 1913, and January 1, 1914, are shown by the following schedules:

	<i>July 1, 1913. Rate per month</i>	<i>Jan. 1, 1914. Rate per month</i>
<i>"Class C" Service:</i>		
Business telephones—1-party line.....	\$1 50	\$2 00
Business telephones—2-party line.....	1 50	1 60
Residence telephones—1-party line.....	1 00	1 25
Residence telephones—party line.....	none	1 00
Grounded party line residence telephones in country—payable quarterly in advance....	1 25	1 25
Grounded party line business telephones in country—payable quarterly in advance....	1 50	1 50
Switching farmer lines—minimum 6 on line—payable quarterly in advance.....	28	35
Private grounded line telephone outside of city—extra for each ½ mile or fraction thereof.	none	25
<i>"Class B" Service:</i>		
Business telephones—1-party line.....	2 50	2 50
Business telephones—2-party line.....	2 00	2 00
Residence telephones—1-party line.....	1 50	1 50
Residence telephones—2-party line.....	1 25	1 25
Residence telephones—4-party line.....	1 00	1 00
Metallic party line residence telephones in country—payable quarterly in advance....	1 50	1 50
Metallic party line business telephones in country—payable quarterly in advance....	2 00	2 00
Private metallic line telephones outside of city—extra for each ½ mile or fraction thereof.	none	50
The following rates apply under all classes of service:		
Extension telephones—business or residence.	1 00	50
Extension bells—business or residence.....	25	25
Extension 6-inch gong—business or residence.	35	35
Desk telephones in residence—extra.....	none	25
Lodge rooms, churches and blacksmith shops classed with residence rates.		
For metallic party line harmonic ringing—extra per station.....	none	25

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Hearing was held at Springfield, Illinois, July 22, 1914. *C. J. Smith* appeared for the petitioner. No one appeared objecting.

From the testimony presented at the hearing it appeared that the schedule of rates put into effect January 1, 1914, involved certain increases, viz.: individual line business telephones \$6.00 per year, individual line residence telephones \$3.00 per year, switching rural service subscribers 85 cents per year; that the petitioner failed to obtain the consent and approval of the Commission to such change in rates through a misunderstanding of the provisions of the law; and that no objection had been made to the increases by any of the subscribers affected.

It further appeared that the schedule of rates made effective January 1, 1914, will not produce any revenue in excess of what is required by the utility to properly operate and maintain the Flora exchange plant, including depreciation, and allowing a reasonable return on the capital invested, and in the light of the facts presented by the testimony, it appeared that the new schedule of rates should be approved.

Later it developed that there was some opposition on the part of the subscribers affected to the increased rates and the issuing of an order was delayed pending an investigation by the experts for the Commission, and on January 26, 1915, Honorable J. W. Thompson, on behalf of the Business Men's Association of Flora, petitioned the Commission for a further hearing in the case.

Such hearing was held at Springfield, Illinois, February 16, 1915. The petitioner was represented by *John N. Lynch* and *Robert Fitzgerald*, attorneys, and the objectors were represented by *Honorable R. S. Jones* and *Honorable J. W. Thompson*, attorneys.

Considerable testimony was presented relating to the value of the Flora telephone exchange property, the conditions under which it was acquired by the Commercial Telephone and Telegraph Company, the general condition of the plant, the adequacy of the service, and the reason-

ableness of the rates. Subsequently, the petitioner submitted an inventory and appraisal of the Flora telephone exchange and statements of the earnings and expenses from July 1, 1913, to June 30, 1914, under the schedule of rates in effect July 1, 1913, and from June 30, 1914, to December 31, 1914, under the schedule of rates made effective January 1, 1914.

The Commission has considered the appraisal in an effort to arrive at the present value of the property. The appraisal and supporting statements involve a consideration of the tangible and intangible elements of the property, and it now appears that a final decision cannot be made in this case until the Commission can hear further testimony bearing on the intangible elements.

Since the filing of the petition for a further hearing in this case, many of the subscribers of the Flora exchange have withheld payment of rental and toll charges, and inasmuch as the utility is dependent upon the current receipts for revenue with which to meet current operating and maintenance expenses, the situation has become critical, and it seems proper for the Commission to issue a temporary order, fixing the schedule of rates or charges that should apply pending the final adjudication of the case.

In fixing such schedule of rates full consideration has been given to the testimony presented by the objectors; also to the requirements of the utility as regards revenue to cover the expense of operation and maintenance, including depreciation.

The Flora telephone exchange is operated as a grounded system, but it appears that the petitioner has installed some metallic lines and that the subscribers who are connected with such lines are paying rates for metallic line or "Class B" service. The presence of a few metallic lines cannot materially raise the quality of the service in general above that of the service on the grounded lines, and it appears that there is no justification for any difference in rates merely by reason of certain subscribers being served on metallic circuits. In view of this, the schedule of rates

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for metallic service should not be made effective until the entire system is reconstructed and all grounded circuits replaced with metallic circuits.

It is, therefore, ordered, That pending a final adjudication of this case, the petitioner, Commercial Telephone and Telegraph Company, suspend all exchange service rates or charges now in force and effect in the city of Flora, Illinois, and establish in lieu thereof the following schedule:

Individual line business telephones.....	\$24 00 per year
Party line business telephones.....	18 00 per year
Individual line residence telephones.....	15 00 per year
Party line residence telephones.....	12 00 per year
Switching rural service telephones.....	4 20 per year
Extension telephones	6 00 per year
Extension bells	3 00 per year
Extension gongs	4 20 per year
Extra charge for desk telephones in residence.....	3 00 per year

The rates herein authorized shall become effective July 1, 1915, and remain in force and effect until otherwise ordered by the Commission.

By order of the Commission, this first day of July, 1915, dated at Springfield, Illinois.

J. G. WOKER, PEARL CITY, ILLINOIS, v. PEARL CITY INDEPENDENT TELEPHONE COMPANY.

Case No. 2938.

Decided July 1, 1915.

**Establishment of Physical Connection for Local and Toll Service
Ordered.**

Petitioner sought the establishment of physical connection for local and toll service between the lines of the Pearl City Mutual Telephone Company and the Pearl City Independent Telephone Company.

Both companies operated in and around Pearl City, the Mutual company serving almost exclusively the territory to the southeast, southwest and northwest of Pearl City, and the Independent telephone company serving almost exclusively the territory to the north and east of Pearl City. A

petition had been signed by the subscribers of both companies requesting the establishment of a connection between the lines of the Mutual company and those of the Independent company. The Mutual company was willing to make the connection but the Independent company refused.

The rates of the Mutual company were considerably lower than those of the Independent company and the Independent company contended that on this account physical connection would cause it irreparable injury.

Held: That before ordering a physical connection between the lines of the two competing companies the Commission must find that public convenience and necessity demands the connection, that the establishment of such a connection is practicable and will not impair the service of either company and that it will not seriously interfere with, or jeopardize, private rights;

That public convenience and necessity do demand the connection is evidenced by the fact that approximately 50 per cent. of the Pearl City subscribers of both companies signed a petition asking the companies to establish said connection; that "the service of neither company is adequate at present and the failure of either company to furnish adequate service is sufficiently serious to create a situation where public convenience and necessity require that the connection asked for be made;"

That the connection can be made at small expense and that no impairment of service will be caused thereby;

That the establishment of the connection will not result in irreparable injury to either company, since, in order to prevent injury to the Independent company which at present has the higher rates in effect, the terms upon which the connection shall be made must be such as will prevent the loss of business to that company;

That the manner of making the connection, the extent of such connection and the schedule of rates or charges that shall be established will be left to the companies in the first instance, and if no agreement can be reached, the Commission will consider these matters and issue a supplemental order covering the same;

Ordered, That the Pearl City Independent Telephone Company and the Pearl City Mutual Telephone Company make such physical connection between their exchanges in the village of Pearl City as is required for the furnishing of toll line and local service, including rural service, to the subscribers of each company;

That the cost of making such connections and the subsequent maintenance thereof be apportioned equally between said companies.

OPINION AND ORDER.

Petition in the above entitled matter represents that the complainant, J. G. Woker, is a physician and surgeon en-

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gaged in regular practice at Pearl City, Stephenson County, Illinois, and is president of the Commercial Club of Pearl City, an association of business men formed for the purpose of furthering the commercial interests of Pearl City; that the defendant, Pearl City Independent Telephone Company, hereinafter referred to as the Independent company, is a public utility engaged in the management and operation of a telephone system in and around the village of Pearl City, serving about 120 subscribers.

Petition further sets forth that the Pearl City Mutual Telephone Company, hereinafter referred to as the Mutual company, also operates a telephone system in and around the village of Pearl City, serving approximately 275 subscribers; that the contiguous territory southeast, southwest and northwest of Pearl City is served almost exclusively by the Mutual company and the territory north and east of Pearl City is served almost entirely by the Independent company; that the telephones of the Independent company are practically useless for long distance service; that without a physical connection between the two companies it is inconvenient and expensive to obtain adequate telephone service in Pearl City and vicinity; that both companies have been repeatedly requested to connect their two systems at Pearl City; that a petition signed by over 200 subscribers of one or both companies, copy of which petition is appended to the formal complaint, has been presented to each company, asking that a physical connection be made, and that, while the Mutual company is willing to make such connection, the Independent company refuses to allow the connection to be established. The complainant therefore prays the Commission that the defendant company be required to answer the charges, and that the Commission prescribe such relief as may be deemed proper.

In answer to the complaint the defendant company alleges that it has never received any offer from the Mutual company relative to a physical connection between the two exchanges at Pearl City; that the chief object of the complainant and the petitioners is to obtain the use of the

defendant's extensive system and its connections without proper compensation; that a physical connection between the two exchanges would damage the defendant's property and business and would result in the confiscation of said property and business without due process of law.

A formal hearing in this matter was held before the Commission at Chicago, October 28, 1914. *J. G. Woker* appeared as the petitioner and *W. L. Boeks*, general manager of the Pearl City Independent Telephone Company, appeared for the defendant.

From the testimony presented at the hearing, it appeared that the Mutual company has about 54 telephones within the limits of Pearl City and about 209 telephones in the country, while the Independent company has about 12 telephones in Pearl City and approximately 136 telephones in the country. Subscribers of the Mutual company have "free service" with 2,500 or more other subscribers of companies located in Carroll, Ogle and Whiteside counties, and the subscribers of the Pearl City exchange of the Independent company have "free service" with about 1,000 subscribers of the defendant company connected with the exchanges at Lena and McConnell and 1,000 other subscribers of connecting companies at Stockton, Warren and Winslow, and also have "free service" with about 3,700 telephones of the Stephenson County Independent Telephone Company, of Freeport, Illinois.

Certain witnesses testified on behalf of the complainant and the testimony of these witnesses was to the effect that there was an actual demand on the part of subscribers of both companies for an interchange of service at Pearl City; that the matter had been pending for some time and that no settlement satisfactory to the subscribers of both companies appeared possible on account of the opposition of the Independent company to the desired connection. The Mutual company had acquiesced in the demand for an interchange of service and had made overtures to the Independent company, but had not been successful in securing a physical connection of the two plants.

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It further appeared that an interchange of service is desired, not only on account of the increased facilities for local service and toll connections at Pearl City that the connection between the two companies would effect, but because such a connection would permit subscribers of the Mutual company to communicate with, and receive messages from the various exchanges connected with the system of the Stephenson County Independent Telephone Company, of Freeport.

At the time of filing complaint the Mutual company had in effect a rate of \$12.00 per annum for subscribers classified as "renters," and a minimum assessment of \$5.00 per annum for "stockholder subscribers." Subsequently, in compliance with the Commission's order in case No. 3136, *Pearl City Mutual Telephone Company, Application for Authority to Change Rates*,* the discriminatory \$5.00 rate was abolished and a rate of \$12.00 per annum was applied to all subscribers, and this \$12.00 rate is now in force and effect. The rates of the Independent company, in force and effect at Pearl City now and at the time complaint was filed, are \$24.00 per annum for business telephones, \$18.00 per annum for residence telephones, and \$5.00 per annum for switching rural telephones where the lines and telephones are owned and maintained by the subscribers.

The section of the Act under which the order of the Commission is sought, requiring physical connection of the lines of the Independent company and Mutual company, is Section 47, Article IV, which reads:

"Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall determine that public convenience and necessity require a physical connection for the establishment of a continuous line of communication between any two or more public utilities for the conveyance of messages or conversations, the Commission may, by order, require that such connection be made. If such public utilities do not agree upon the division between them of the cost of such physical connection or connections, the Commission shall have authority, after further hearing, to establish such division by supplemental order."

* Noted in Commission Leaflet No. 40, p. 1013.

In considering a proposed physical connection between the lines of two competing companies, it is necessary that the facts in the case be such as to show clearly that public convenience and necessity demand and require a physical connection; that the establishment of such a connection is practicable and would not impair the service of either company; and that it would not seriously interfere with, or jeopardize, private rights.

In this case, from the point of view of public convenience and necessity, it appears that the establishment of a physical connection between the two companies is desirable. Of the 200 signatures appended to the formal complaint, about 106 appear to be the signatures of subscribers of the Independent company and the balance, apparently, are subscribers of the Mutual company. According to the testimony in the case, the two companies at Pearl City serve, jointly, about 400 subscribers, and it appears, therefore, that approximately 50 per cent. of the Pearl City subscribers of both companies desire the connection.

It further appears that the service of neither company is adequate at present and the failure of either company to furnish adequate service is sufficiently serious to create a situation where public convenience and necessity require that the connection asked for be made.

As to the practicability of establishing a connection, it appears that the exchange of the Independent company and the exchange of the Mutual company in the village of Pearl City are so situated that they can be connected by means of trunk lines at comparatively small expense, and there is nothing in the record which indicates that such connection will result in any impairment of the service.

The final matter for consideration must be whether or not the establishment of a physical connection will result in irreparable injury to the owners of the facilities of either company. As far as the Mutual company is concerned, no question was raised regarding this. The Independent company, however, contends that the effect of a physical connection would be injurious by reason of the

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difference in the rates of the two companies now in effect. In order to prevent injury to the Independent company, the terms upon which the connection should be made would have to be such as to prevent the loss of business to that company. The law provides that the companies concerned shall agree upon the terms and that in case an agreement cannot be reached, the Commission shall fix the terms. It is not necessary, therefore, for the Commission to fix the terms in this order.

Since it appears that public convenience and necessity require the establishment of a physical connection for the interchange of both local and long distance service between the exchanges of the Pearl City Independent Telephone Company and the Pearl City Mutual Telephone Company in the village of Pearl City, Illinois; that the establishment of such connection is practicable and will not result in any impairment of the service of either company, and that it will not result in irreparable injury to the owners of the facilities of either company, it follows that an order should be entered accordingly.

The manner of making the connection, the extent of such connection, and the schedule of rates or charges that should be established, will be left to the companies in the first instance, and if no agreement can be reached as to the manner of making the connection and the rates or charges that shall be established, a further hearing will be granted the parties by the Commission, and a supplemental order entered determining these matters. As the cost of making the connection will not be great, and each company will be benefited in like measure, it is equitable that the cost of such connection should be apportioned equally between the two companies.

It is, therefore, ordered, That the Pearl City Independent Telephone Company and the Pearl City Mutual Telephone Company make such physical connection between their exchanges in the village of Pearl City as is required for the furnishing of toll line and local service, including rural service, to the subscribers of each company.

It is further ordered, That the cost of making such physical connection and the subsequent maintenance thereof be apportioned equally between said companies.

Sixty days is deemed a reasonable time within which the companies shall comply with this order.

By order of the Commission, this first day of July, 1915, dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF THE JOY SWITCH-BOARD COMPANY, OF JOY, ILLINOIS, FOR AUTHORITY TO CHANGE RATES.

Case No. 3449.

Decided July 1, 1915.

Discrimination in Favor of Stockholders and Subscribers Owning Telephones Eliminated.

OPINION AND ORDER.

This is an application for authority to discontinue discriminatory rates. Application sets forth that the petitioner is a public utility engaged in the management and operation of a telephone system in and around the town of Joy, Mercer County, Illinois, and that as such public utility it is subject to the provisions of an "*Act to Provide for the Regulation of Public Utilities*" now in force in the State of Illinois.

Application sets forth that the rates of the petitioner now in force and effect are as follows:

Rented telephones — in town only	\$12 00 per year
Telephones owned and maintained by subscribers — in town only	6 00 per year
Stockholders' telephones — instrument and lines owned and maintained by the subscriber — average assessment	4 00 per year

Application is made for authority to change the rates charged subscribers who are stockholders and subscribers

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who own their telephones, in order to discontinue the existing discriminations, and to charge a rate of \$12.00 per year to all subscribers.

Conference Ruling No. 8* and other decisions heretofore made by this Commission provide that a stockholder cannot be given any greater or less or different rate than the rate charged other subscribers, and the rate that the petitioner now has in effect for subscribers who are stockholders is discriminatory and unlawful.†

“In the Matter of Rates and Charges Applicable to Subscribers Who Own Their Telephones,” Conference Ruling No. 15,‡ the Commission held that it is unlawful to grant any reduction from the regular rate on account of the subscribers owning their telephones. The above mentioned conference ruling also fixes the terms under which a telephone company may rent a telephone from the subscriber who owns the same.

It is, therefore, ordered, That the rates charged subscribers who are stockholders and subscribers who own their telephones, as set forth in the application of the petitioner, Joy Switchboard Company, of Joy, Mercer County, Illinois, shall be discontinued and a rate of \$12.00 per year, which is the regular schedule rate that now applies to subscribers classified as renters, shall apply to all subscribers, without discrimination.

It is further ordered, That such change in rates shall become effective as of July 1, 1915, and the regular schedule rate shall be filed, posted and published by said petitioner as provided by Section 34 of an Act entitled, *“An Act to Provide for the Regulation of Public Utilities.”*

By order of the Commission, this first day of July, 1915, dated at Springfield, Illinois.

* See Commission Leaflet No. 31, p. 31.

† An order requiring the elimination of discrimination in favor of stockholders was issued in the *“Matter of the Seymour Telephone Company.”* Case No. 3607. Decided July 22, 1915.

‡ See Commission Leaflet No. 37, p. 457.

IN THE MATTER OF THE APPLICATION OF THE BRUCE MUTUAL
TELEPHONE COMPANY FOR AUTHORITY TO CHANGE RATES.

Case No. 2559.

*Decided July 22, 1915.***Increase in Rates for Rural Party Service Telephones Authorized.**

OPINION AND ORDER.

The petitioner in this case is a public utility engaged in the operation and management of a rural telephone system in and around the village of Bruce, Moultrie County, Illinois. Application sets forth that a rate of \$3.00 per annum for all subscribers is now in force and effect; that the revenue derived from this rate is not sufficient to meet the expenses of the company; and that a rate of \$4.00 per annum should be established.

Hearing was held at Springfield, Illinois, June 2, 1915. *Honorable R. D. Meeker* appeared for the petitioner; no one appeared objecting.

From the testimony presented at the hearing it appeared that the Bruce Mutual Telephone Company, a corporation, was organized primarily for the purpose of serving the convenience of the stockholders and not for profit; that it is now serving about 150 subscribers, 143 of which are stockholders; that prior to the taking effect of the "*Act to Provide for the Regulation of Public Utilities*," persons desiring service who were not stockholders in the company provided their own lines and telephones and were charged a rate of \$12.00 per year; that this practice was discontinued in accordance with Conference Ruling No. 8* and that all subscribers now pay the same rate regardless of the ownership of stock or the ownership of lines and telephones.

It further appeared that the gross annual revenue under the present rate of \$3.00 per year is about \$450, while the operating expenses, including a salary of \$15.00 per year for the secretary of the company, and a salary of \$50.00 per year to the manager, amount to \$490.

It appears that the difference between the rate charged

* See Commission Leaflet No. 31, p. 31.

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stockholders and the rate formerly charged non-stockholders, produced sufficient revenue to cover the deficit, but with all subscribers paying the same rate, the utility is in need of more revenue.

It is the desire of the stockholders to conduct the affairs of the company just as economically as practicable and at the same time furnish a reasonably satisfactory service, and while it is doubtful whether the proposed rate will produce sufficient revenue to meet the requirements of the utility, particularly in view of the fact that no allowance heretofore has been made for depreciation, the circumstances presented in the case are such that the establishment of a higher rate is not warranted at this time.

It is, therefore, ordered, That the petitioner, Bruce Mutual Telephone Company, be, and the same is hereby, authorized to establish a rate of \$4.00 per year for rural party line telephones, such rate to become effective as of July 1, 1915.

It is further ordered, That the rate herein authorized shall be filed, posted and published as provided by Section 34 of "*An Act to Provide for the Regulation of Public Utilities.*"

By order of the Commission this twenty-second day of July, 1915, dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF THE GILLESPIE HOME
TELEPHONE COMPANY FOR AUTHORITY TO CHANGE RATES.

Case No. 3259.

Decided July 22, 1915.

**Increase in Rates Authorized upon Reconstruction of Exchange—
Company's Appraisal of Property Considered—Allowance of
15 Per Cent. for Overhead Charges During Reconstruction Held Reasonable.**

Applicant sought authority to increase its rates for all classes of service in the city of Gillespie.

The rates in effect had been established when grounded circuit magneto service was being furnished. Subsequently the applicant had constructed,

and was furnishing service by means of, a central energy plant. The installation of the new plant had been made after conferences with the officials of the city and the Commercial Club, and the rates sought to be put into effect had been tentatively agreed upon by the company, the council and the Commercial Club. The Commission checked the inventory and appraisal submitted by the company, according to which the present value of the Gillespie exchange plant on a reproduction-cost-new-less-depreciation basis, including 15 per cent. for overhead expenses, was \$53,721.60, and found that the values attached to the physical property were substantially correct.

The allowance of 15 per cent. for overhead expenses during construction was based largely on the fact that the applicant upon purchasing the property from its former owners was required to reconstruct practically the entire plant at Gillespie, except the rural lines. No part of the overhead expenses incurred during reconstruction was charged to operating expenses.

Held: That in view of the fact that the utility is being appraised as an operating concern, allowance for such overhead charges should be made.

Operating Expenses, Revenues, Reserve for Depreciation and Return on Investment Considered in Approving Schedule of Rates.

The Commission also considered the operating revenues and expenses under the old rates and conditions and under the proposed rates and conditions. Under the old rates, the net return, without making any allowance for reserve for depreciation, was 2.7 per cent.; under the proposed rates 5 per cent. would be available for reserve for depreciation, interest and dividends.

Held: That while the establishment of the proposed rates would probably not yield sufficient revenue immediately to enable the utility to operate profitably its exchange at Gillespie, the present condition was abnormal in that the new exchange had been built with a view to greater development in the immediate future whereupon the exchange would serve an increasing number of subscribers with little or no additional expense, and consequently net revenue would be greatly increased;

That as the proposed rates would probably never yield an unreasonable net return on the investment, they should be approved.

OPINION AND ORDER.

The petitioner in this case is a public utility engaged in the management and operation of a telephone system in Macoupin County, with exchanges at Gillespie and Benld, and seeks the authority of the Commission to establish a new schedule of rates or charges for all classes of service in the city of Gillespie.

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Application sets forth that the present schedule of rates was established several years ago and applied to grounded line magneto exchange service; that the old plant became obsolete; that the petitioner has expended a large sum of money for the construction of a new central energy plant, including a central office building; that the revenue derived from the present rates is not sufficient to cover the expense of operation and maintenance, including depreciation, and pay a reasonable return on the investment; and that the Gillespie Commercial Club and the city council of the city of Gillespie have approved the newly constructed plant and the schedule of rates proposed by the petitioner.

The rates now in force and effect as set forth in the application are as follows:

<i>Classification</i>	<i>Rates</i>
Individual line business telephone.....	\$24 00 per annum
Party line business telephone, metallic circuit.....	21 00 per annum
Party line business telephone, grounded line.....	18 00 per annum
Individual line residence telephone, metallic circuit, desk set	21 00 per annum
Individual line residence telephone, grounded line, desk set	18 00 per annum
Individual line residence telephone, metallic circuit, wall type	18 00 per annum
Individual line residence telephone, grounded line, wall type	15 00 per annum
Party line residence telephone, metallic circuit, desk set	18 00 per annum
Party line residence telephone, grounded circuit, desk set	15 00 per annum
Party line residence telephone, metallic circuit, wall type	15 00 per annum
Party line residence telephone, grounded line, wall type	12 00 per annum
Party line rural grounded line.....	12 00 per annum
Extension telephones	6 00 per annum
Extension bells	1 80 per annum
City exchange area extends for a radius of one mile from the central office.	

The schedule of rates that the petitioner proposes to be put into effect follows:

Individual line business telephone, metallic circuit...	\$30 00 per annum
Two-party line business telephone, metallic circuit, selective ringing	24 00 per annum
Individual line residence telephone, metallic circuit..	21 00 per annum
Two-party line residence telephone, metallic circuit, selective ringing	18 00 per annum
Four-party line residence telephone, metallic circuit, selective ringing	15 00 per annum
Party line rural telephone grounded line.....	15 00 per annum
Extension telephones	6 00 per annum
Extension bells	1 80 per annum

A discount of 10 cents per month will be given on all bills for city service if paid at the office of the company on or before the fifteenth of the month in which the service is rendered, said discount to be in effect for the period of one year from the installation of this schedule of rates and to be then abandoned.

A discount of 25 cents per month will be given on all bills for rural service if paid at the office of the company, quarterly in advance on or before the last day of the first month of the quarter in which the service is rendered.

Hearing in this case was held at Springfield, Illinois, February 16, 1915. *Orville F. Berry* and *B. B. Boynton*, attorneys, appeared for the petitioner; no one appeared objecting.

It appeared from the testimony that the petitioner recently built a new central energy telephone plant in the city of Gillespie, replacing a magneto system that had been in operation for a number of years that did not meet the requirements of the community; that prior to the building of the new plant, the officers of the Gillespie Home Telephone Company thoroughly canvassed the telephone situation in the city of Gillespie with a view of getting an expression from the prominent business men of the city as to the kind of a telephone system and the character of service that was desired. The matter was taken up with the city council of the city of Gillespie and the Gillespie Commercial Club, and a committee representing these bodies made an inspection of a number of modern telephone plants in the State and the report of this committee resulted in both bodies adopting resolutions urging the Gillespie Home Telephone Company to install a modern central energy telephone system in the city of Gillespie.

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The rates or charges for service to become effective after the completion of the new plant were tentatively agreed upon by the Gillespie Home Telephone Company, the city council of the city of Gillespie and the Gillespie Commercial Club, and the petitioner now seeks the authority of the Commission to put into effect such schedule of rates.

Bert Rice, mayor of the city of Gillespie, and Alfred A. Isaacs, president of the Gillespie Commercial Club, appeared as witnesses for the petitioner, and it appeared from their testimony that the petitioner in building the new exchange plant had complied with all the requirements imposed by the city of Gillespie, and that no objection exists to the proposed schedule of rates.

The petitioner submitted an inventory and appraisal of the property of the Gillespie Home Telephone Company, as of date December 24, 1914, according to which the depreciated value of the Gillespie exchange plant on a reproduction cost present basis, including an allowance of 15 per cent. for overhead expenses during construction, is \$53,721.60, as shown by the following table:

FINAL SUMMARY.

GILLESPIE PLANT.

	<i>Cost of Reproduction</i>	<i>Cost less Depreciation</i>
1. Real estate	\$3,550 00	\$3,550 00
2. Central station equipment.....	5,615 00	5,615 00
3. Distribution system	29,097 50	27,357 00
4. Subscriber station equipment.....	5,330 50	4,957 00
5. Furniture and fixtures.....	225 00	225 00
6. Tools and vehicles.....	1,000 00	800 00
TOTAL	*\$46,818 00	*\$44,504 00
7. Add 15 per cent.....	7,022 70	6,675 60
TOTAL	\$53,840 70	\$51,179 60
8. Stores and supplies.....	3,597 00	2,542 00
TOTAL	\$57,437 70	\$53,721 60

* An error of \$2,000 is apparent.

In order to determine the accuracy of the inventory and appraisal, an examination of the physical property of the Gillespie Home Telephone Company was made by the Commissioner's experts. The central office equipment and a portion of the outside plant were carefully checked with the inventory. Furniture, fixtures, tools, vehicles, stores and supplies were not itemized in the inventory and it was necessary to secure more detailed lists of these items. It appeared that the inventory of much of the outside plant was prepared from the plans and specifications used in the reconstruction of the Gillespie exchange and from distribution maps of the rural plant. All available plans, specifications, records of new construction and maps indicating the layout of the distribution plant were carefully studied and, as far as it was practicable to determine, considering that no complete field count had been made, the inventory submitted by the petitioner appears to be substantially correct.

An analysis was made of the costs set up in the appraisal and by comparison with average costs it appeared that the value of some items had been underestimated in certain instances, while the value of other items had been overestimated. The various unit costs were not classified to indicate exactly how they had been computed and it was necessary to secure considerable additional unit cost data.

A comparative analysis of this additional information, including the division of the unit costs into their component elements, was sufficient to show that the cost new and depreciated values attached to the physical property as a whole are reasonable.

The allowance of 15 per cent. for overhead expenses during construction is based largely on the fact that the Gillespie Home Telephone Company, upon purchasing the property from the previous owners, was required to reconstruct practically the entire Gillespie plant with the exception of the rural lines. The old city plant apparently had been poorly maintained and it appears that very little of the old plant could be used in the reconstruction of the exchange, which virtually amounted to building a new plant.

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According to the evidence submitted, the operating revenues prior to reconstruction, were practically absorbed by operating expenses, and it does not appear that any of the overhead expenses incurred during reconstruction, such as expenses of engineering, designing and superintending the work during reconstruction, legal, organization and other expenses, interest on investment, insurance and taxes, contingencies, etc., were charged to operating. In fact the available net operating income would have paid only a small part of these expenses. An addition of 15 per cent. to the capital account to cover such preliminary expenses conforms with accepted engineering practices, and in view of the fact that the utility is being appraised as an operating concern, it appears reasonable to approve such an allowance in this case.

The present value of the Gillespie exchange, according to the appraisal, is considerably in excess of the average value of exchanges in towns of the same size and serving about the same number of subscribers. It appears, however, that the plant has been installed with a view of serving a much greater number of subscribers in the immediate future and the evidence submitted in the case indicated that the character of the plant constructed was required in order to furnish the class of service demanded by the utility's patrons.

In connection with the inventory and appraisal, the petitioner submitted statements of earnings and expenses from which it appears that the operation of the Gillespie exchange during the year 1914 resulted in a net income of \$1,110.02, as shown by the following table:

STATEMENT OF REVENUES AND EXPENSES.

Telephone operating revenues:

Rental revenues	\$5,965 74	
Toll	2,533 07	
Miscellaneous revenues	119 89	
		<hr/>
		\$8,618 70
Less allowances to subscribers.....	\$92 52	
Less tolls to other companies.....	1,361 23	
		<hr/>
		1,453 75
		<hr/>
Gross income		\$7,164 95
Expenses:		
Operating	\$3,351 16	
General	2,620 07	
Taxes	83 70	
		<hr/>
		6,054 93
		<hr/>
Income less expenses.....		\$1,110 02

No amount was set aside for depreciation in 1914, and as \$1,110.02 represents a return of only 2.7 per cent. on an investment of \$53,721.60, it appears that the utility must increase its net earnings if the plant is to be operated profitably.

The increase in revenue that may be expected if the proposed schedule of rates is put into effect is indicated by the following extract from the petitioner's statements:

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PRESENT SCHEDULE.

<i>Classification.</i>	<i>Annual Rates.</i>	<i>Annual Revenues.</i>
202 party line residence telephones.....	\$12 00	\$2,424
40 party line business telephones.....	18 00	720
39 private line residence telephones.....	18 00	702
3 party line business telephones.....	21 00	63
9 private line business telephones.....	24 00	216
138 rural telephones	12 00	1,656
431		\$5,781

PROPOSED SCHEDULE.

180 4-party line residence telephones.....	\$15 00	\$2,700
22 2-party line residence telephones.....	18 00	396
39 individual line residence telephones.....	21 00	819
43 2-party line business telephones.....	24 00	1,032
9 individual line business telephones.....	30 00	270
138 rural telephones	12 00	1,656
431		\$6,873

ESTIMATED INCREASE — \$1,092.

According to the statements of the petitioner, therefore, the net earnings that will be available for depreciation, interest and dividends under the proposed rates will amount to only \$2,616, which is approximately 5 per cent. of \$53,721.60. Judging from the character of the plant such rate will not be sufficient to provide a necessary depreciation reserve.

The petitioner's estimate of expenses for the Gillespie exchange during 1914 shows a charge of \$3,351.16 to operating. On the basis of 431 owned telephones, this amount represents an expense of approximately \$7.80 per telephone, which is less than the average operating expense per station of other exchanges of similar size and character.

In addition to operating expenses there is an item of \$83.70 for taxes, and a further item of \$2,620.07 classified as a general expense. This general expense is not apportioned on the basis of exchanges, but an analysis of such expense for the entire property indicates that it is charge-

able to general office salaries, traveling expenses and miscellaneous items.

It is reasonable to expect that inasmuch as the business of the Gillespie Home Telephone Company is conducted through a centralized organization, that controls the operation of several other telephone companies, better results would be obtained than in the case of the average small isolated company. It is difficult, however, to appreciate the efficiency of a system under which the general expense of conducting the business of two exchanges of the size of Gillespie and Benld represent approximately 79 per cent. of the total operating expenses.

It is apparent that the local organization of the Gillespie Home Telephone Company has been built up with a view to operating a high-class modern telephone exchange in the city of Gillespie, and while the present character of the town would not seem to warrant the establishment of so expensive a plant, it is presumed that the management of the utility must have considered the material possibilities of a greater development in the immediate future. This was substantiated by a study of the local conditions made by the Commission's experts. It is reasonable to assume, therefore, that the exchange will serve an increasing number of subscribers with little or no additional expense, and that the net revenue consequently will be greatly increased.

After carefully considering all the facts in this case, it is the opinion of the Commission that while the establishment of the proposed rates will probably not yield sufficient revenue immediately to enable the utility to profitably operate the exchange at Gillespie, the present condition is abnormal and the true results of the establishment of the higher rates cannot be correctly estimated at this time. After the exchange has been in operation a greater length of time and the number of subscribers has increased in proportion to the capacity of the plant, it may be necessary to consider some different schedule of rates. It is not

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likely, however; that the proposed rates will ever yield an unreasonable net return on the investment, and as no objection to these rates has been filed with the Commission, it appears proper to grant the relief prayed for by the petitioner.

It is, therefore, ordered, That the petitioner, Gillespie Home Telephone Company, shall discontinue the schedule of rates or charges now in force and effect in the city of Gillespie, Illinois, and substitute in lieu thereof the following schedule:

Individual line business telephones, metallic circuit..	\$30 00 per annum
Two-party line business telephones, metallic circuit	
selective ringing	24 00 per annum
Individual line residence telephones, metallic circuit.	21 00 per annum
Two-party line residence telephones, metallic circuit	
selective ringing	18 00 per annum
Four-party line residence telephones, metallic circuit	
selective ringing	15 00 per annum
Party line rural telephones, grounded circuit.....	15 00 per annum
Extension telephones	6 00 per annum
Extension bells	1 80 per annum

A discount of 10 cents per month will be allowed on all bills for city service paid at the office of the company on or before the fifteenth day of the month in which the service is rendered.

A discount of 25 cents per month will be allowed on all bills for rural service paid at the office of the company, quarterly in advance, on or before the last day of the first month of the quarter in which the service is rendered.

It is further ordered, That the rates herein authorized shall become effective as of August 1, 1915, and shall be filed, posted and published by the petitioner as provided by Section 34 of the "*Act to Provide for the Regulation of Public Utilities.*"

By order of the Commission, this twenty-second day of July, 1915, dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF THE COLCHESTER
FARMERS TELEPHONE COMPANY FOR AUTHORITY TO
CHANGE RATES.

Case No. 3537.

Decided July 22, 1915.

**Increase in Rates Authorized — Furnishing of Equipment by Subscribers
Disapproved — Rental of Subscribers' Equipment Authorized —
5 Per Cent. Allowed for Reserve for Depreciation —
6.4 Per Cent. Held Reasonable Rate of Return.**

Applicant sought authority to increase its rates from \$6.00 per year for both business and residence telephones to \$13.00 per year for business telephones and \$10.00 per year for residence telephones. Under the new rates all equipment was to be furnished by the company, whereas under the old rates subscribers had owned and maintained their telephones. The company intended to rent subscribers telephones in accordance with the provisions of Conference Ruling No. 15.*

The Commission considered the value of the property and the earnings and operating expenses of the applicant under the existing rates. No allowance had been made under operating expenses for reserve for depreciation, and the Commission in computing expenses allowed 5 per cent. of the property value for this purpose.

The Commission further computed that \$600 should be allowed for salaries of additional operators, and a necessary increase in the manager's salary; that the rental of subscribers' equipment, as provided by Conference Ruling No. 15,* would be \$342.40; that under the proposed schedule of rates the gross income would be adequate to pay the increased operating expenses, including reserve for depreciation and rental of subscribers' equipment, and to yield 6.4 per cent. as a return on the value of the property.

Held: That the proposed increase in rates should be authorized.

OPINION AND ORDER.

Application in the above entitled matter sets forth that the petitioner is a public utility engaged in the management and operation of a telephone exchange in the city of Colchester, McDonough County, Illinois; that it now has in effect a rate of \$6.00 per year for both business and residence subscribers who own and maintain their telephones, and a rate of \$3.00 per year for switching rural service subscribers; that the rate of \$6.00 per year for business and

*See Commission Leaflet No. 37, p. 457.

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residence telephones in the city of Colchester does not produce sufficient revenue to meet the requirements of the company.

Application is made for authority to establish the following schedule of rates:

Business telephones — subscriber furnishing the instrument	\$12 00 per year
Residence telephones — subscriber furnishing the instrument	9 00 per year

Subsequent to the filing of the application the petitioner was informed of the provisions of Conference Ruling No. 15,* “*In the Matter of Rates and Charges Applicable to Subscribers Who Own Their Telephones,*” and on March 19, 1915, the petitioner filed an amended application, which provides for a rate of \$13.00 per year for business telephones and a rate of \$10.00 per year for residence telephones, all equipment to be furnished by the company.

Hearing was held at Springfield, Illinois, April 20, 1915. *Louis A. Mull*, secretary of the Colchester Farmers Telephone Company, appeared for the petitioner. No one appeared objecting.

From the testimony presented at the hearing, it appeared that the Colchester Farmers Telephone Company was organized primarily to serve the convenience of the stockholders, most of whom are farmers residing in the vicinity of Colchester. The capital stock of the company is \$6,000, divided into 600 shares, of which 473 shares are outstanding. Formerly all of the subscribers served were stockholders in the company and the business was conducted under a mutual or co-operative plan. In response to a demand for service in the city of Colchester and on the part of persons in the contiguous rural districts who were not stockholders, the company extended its plant and provided such service. Persons in the city of Colchester desiring service were required to furnish their own telephones, the company providing the line and all other equipment. This practice has

*See Commission Leaflet No. 37, p. 457.

been strictly adhered to, there being only one subscriber, the Chicago, Burlington and Quincy Railroad Company, whose telephone is furnished by the company.

The rural lines which were formerly a part of the property of the company are now owned and maintained by the subscribers connected therewith. Forty-one such lines are connected with the Colchester exchange serving about 470 subscribers. These subscribers are classed as rural service subscribers, and it is to these subscribers that the switching service rate of \$3.00 per year applies.

It further appeared from the testimony that certain improvements in the central office equipment and outside plant are necessary; that a considerable part of this is chargeable to replacements, and that the company has no funds from which payment for such replacements and improvements can be made.

In support of the petitioner's statement that the earnings under the rates now in force and effect are insufficient to pay the operating expenses of the company and allow a reasonable amount for depreciation, a sworn statement of the earnings and expenses of the company for the period January 1, 1914, to January 1, 1915, was filed. According to this statement, the gross revenues for the year 1914 amounted to \$2,631.03 and the expenses amounted to \$2,807.77. Included in operating expenses, however, are certain items for material and equipment, amounting in total to \$655.84, which leaves the net operating expenses \$2,151.93, making the net revenue for the year \$479.10. No amount is included in the statement for depreciation.

Subsequent to, and in pursuance of, a stipulation entered into at the hearing, the petitioner submitted an inventory of the property of the Colchester Farmers Telephone Company. In accordance with said stipulation, this inventory was checked by the experts for the Commission and their reports embodied in and made a part of the record in the case. From an analysis of said inventory and report, and considering the age and general condition of the property as shown by the testimony presented at the hearing, it

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appears that the physical property of the company is worth approximately \$5,500.

Inasmuch as no amount has been set aside for depreciation, it appears proper that at least 5 per cent. of the property value should be deducted for this purpose from the gross revenue annually. At 5 per cent. the annual depreciation charge will amount to approximately \$275.

The annual gross operating expenses, therefore, including a necessary depreciation charge, would amount to \$2,426.93. With an annual revenue of approximately \$2,631, it appears that the utility is earning little net revenue at the present time. The utility faces certain increases in operating expenses on account of additional operators being required, and some further allowance to be made for the manager's salary, which is now insufficient, and that the stockholders are entitled to a reasonable return on the amount that they have invested in the property.

Under the rates proposed by the petitioner it is intended to allow each subscriber who owns his telephone an annual rental of \$1.60 per year, as provided by Conference Ruling No. 15.* The payment of such rental is properly chargeable to operating expense and will result in an increase of \$342.40 per year.

The gross operating expenses, therefore, including the charge of \$342.40, instrument rentals, and an allowance of \$600 per year for additional operators and an increase in the manager's salary, will amount to approximately \$3,400 annually.

The revenue that will be derived under the proposed schedule of rates with the development as of April 1, 1915, is indicated by the following table:

47 business telephones at \$13.00 per year.....	\$533
174 residence telephones at \$10.00 per year.....	1,740
468 rural service telephones at \$3.00 per year.....	1,404
Estimated net toll receipts per year.....	75
<hr/>	
GROSS REVENUE	\$3,752

*See Commission Leaflet No. 37, p. 457.

With a gross income of \$3,752 per year and operating expenses amounting to \$3,400, the net revenue under the proposed schedule will amount to \$352, which represents a return of 6.4 per cent. on an investment of \$5,500, the estimated value of the physical property.

It is, therefore, ordered, That the petitioner, Colchester Farmers Telephone Company, discontinue the rate of \$6.00 per annum that now applies to all subscribers in the city of Colchester and establish in lieu thereof the following schedule of rates:

Business telephones	\$13 00 per year
Residence telephones	10 00 per year
Switching rural service subscribers.....	3 00 per year

It is further ordered, That such schedule of rates or charges shall become effective as of August 1, 1915, and shall be filed, posted and published by said petitioner as provided by Section 34 of an act entitled "*An Act to Provide for the Regulation of Public Utilities.*"

By order of the Commission, this twenty-second day of July, 1915, dated at Springfield, Illinois.

FARMERS MUTUAL TELEPHONE COMPANY OF LOSTANT, ILLINOIS, *v.* CENTRAL UNION TELEPHONE COMPANY AND TONICA TELEPHONE COMPANY.

Case No. 3538.

Decided July 22, 1915.

Establishment of Physical Connection Between Exchanges of Competing Local Companies in Order to Provide Indirect Connection for Toll Service Ordered.

Complainant alleged that the Central Union Telephone Company refused to accept and transmit messages from its lines when routed via Tonica.

Complainant was operating a telephone system in and around Lostant and had a connection with the Tonica Telephone Company, which in turn had a connection with the Central Union Telephone Company at Tonica.

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The Central Illinois Telephone Company was also operating an exchange at Lostant and was connected with the Central Union company at Rutland. The Central Union company refused to accept messages from the complainant's line when said messages were routed over the lines of the Tonica company, claiming that all messages from Lostant for points on the Central Union lines should be routed over the Central Illinois company's lines via Rutland.

The Central Illinois company was willing to make connection with the lines of the complainant but contended that if the Central Union company handled Lostant business via Tonica irreparable injury to the Central Illinois company would result, and further held that the amount of Lostant business did not justify any change in routing. The Central Union company was willing to extend the use of its toll lines to the complainant but maintained that to avoid confusion in routing, checking and apportioning commissions, all Lostant business should be routed through the Central Illinois exchange.

Held: That the possession of a toll connection with the Central Union company is an asset of considerable value to the Central Illinois company since if it were not for this connection most of the Lostant subscribers of the Central Illinois company would take the service of the complainant company whose rates for local service are very much lower than those of the Central Illinois company;

That to authorize the establishment of a toll connection between the Farmers Mutual company and the Central Union company via Tonica, and at the same time allow the continuance of the present arrangement between the Central Union and the Central Illinois companies would result not only in a considerable loss to the Central Illinois company and an unnecessary expense to the Central Union company, but would also tend to aggravate and prolong the unsatisfactory competitive conditions existing at Lostant;

That the establishment of a connection between the competing exchanges at Lostant, said connection to be used for toll purposes, would meet the requirements of the complainant company and is the only practical manner of providing adequate toll facilities for the Farmers Mutual company;

That in order to prevent injury to the Central Illinois company the terms upon which the connection should be made must be such as to prevent the loss of business by that company because of the physical connection, these terms to be fixed by agreement of the companies, or, in case of failure of the companies to agree, by the Commission.

OPINION AND ORDER.

Petition in this case represents that the complainant is engaged in the operation and management of a telephone system in and around the village of Lostant, LaSalle

County, Illinois; that the defendants, Central Union Telephone Company and Tonica Telephone Company, are public utilities and have refused and neglected to receive, transmit and deliver messages from the complainant; that the Central Union company accepts messages from and delivers messages to other companies via Tonica, viz.: the McNabb Mutual Telephone Company and Florida Mutual Telephone Company, and that the refusal on the part of the Central Union company to accept messages and deliver messages to the Farmers Mutual company via Tonica constitutes a discrimination and is in violation of Sections 38 and 44 of the "*Act to Provide for the Regulation of Public Utilities.*"

Hearing was held at Springfield, Illinois, April 20, 1915. *Alfred H. Bell* and *W. G. Lynch* appeared for the petitioner; *C. H. Rottger* appeared for the Central Union Telephone Company and *C. R. Ong* and *W. H. Kays* appeared for the Tonica Telephone Company.

It appeared from the testimony that the Central Union Telephone Company has no direct connection with Lostant; that it has a physical connection with the Tonica Telephone Company at Tonica, also a physical connection with the Central Illinois Independent Telephone Company at Rutland; that the Central Illinois company operates an exchange at Lostant; that all toll messages between Lostant and points reached over the lines of the Central Union Telephone Company, and its connecting companies, are routed over the lines of the Central Illinois company via Wenona and Rutland; that a connecting line is maintained between the Farmers Mutual company and the Tonica company; that the Tonica company is willing to accept and deliver toll messages from and to Lostant over such line via Tonica and that it is estopped from handling such messages to points reached over the lines of the Central Union company because of the refusal of the Central Union company to receive and deliver such messages.

The Tonica company protested against any complaint being directed against it, and, it appearing that the Central

Illinois Independent Telephone Company should have been made a party to the proceeding, leave was granted the petitioner to file an amended petition and the case was continued.

Hearing on the amended petition was held at Springfield, Illinois, May 18, 1915. *Honorable William Scanlan*, attorney, appeared for the petitioner, *C. H. Rottger* again appeared for the Central Union Telephone Company and *F. Z. Ames* appeared for the Central Illinois Independent Telephone Company.

It appeared from the testimony presented by the petitioner that the Farmers Mutual Telephone Company serves about 200 subscribers in and around the village of Lostant; that these subscribers cannot get long distance connection; that there is considerable demand for long distance connection, particularly with Ottawa, which is the county seat of LaSalle County; that the natural route for business between Lostant and Ottawa, and other points in LaSalle County and beyond, is via Tonica and LaSalle; that the Farmers Mutual company and the Tonica company own jointly a No. 12 iron metallic circuit between Lostant and Tonica, and that this line should be used in the handling of business with Lostant and an indirect connection established between the lines of the Farmers Mutual company and the toll line system of the Central Union company.

It appeared from the testimony of Mr. Ames that the Central Illinois Independent Telephone Company, a commercial company, capitalized at \$75,000, operates a general telephone system consisting of local exchanges and connecting toll lines in Marshall, LaSalle and Livingston counties, with its principal place of business at Rutland, Illinois; that in 1906 the Central Illinois company acquired by purchase a telephone exchange at Lostant; that subsequently on account of some dissatisfaction among the rural subscribers of the Lostant exchange, another company was formed which was operated on a so-called mutual or co-operative plan; that through the efforts of the Mutual company a great many subscribers of the Central Illinois com-

pany discontinued their service, so that the number of subscribers served by it was reduced from 170 in 1906 to 49 in 1915.

It further appeared that of the 24 business houses in the village of Lostant that have telephone service 20 have the service of the Central Illinois company; that the Farmers Mutual company has only a few more subscribers in the village proper than the Central Illinois company; that in 1911, through the influence of the Central Union company, an effort was made to consolidate or merge the two exchanges at Lostant, and that several propositions were made to the Farmers Mutual company by the Central Illinois company. Nothing was accomplished through these negotiations and the matter was carried along until February, 1915, when the Farmers Mutual company filed complaint with the Commission.

Mr. Ames contended that the Central Illinois company had been ready and willing at all times to make connection with the Farmers Mutual company or to dispose of its property at the appraised value of the physical plant. He further contended that for the Central Union company to handle business with Lostant via Tonica would result in irrevocable injury to the Central Illinois company and that the amount of business handled with Lostant does not justify any change in the present routing.

It appeared from the testimony of Mr. Rottger that the present arrangement is entirely satisfactory to the Central Union company; that the amount of business handled with Lostant does not justify any change in the routing; that the plan proposed by the petitioner would result in a split report of the business with Lostant which would cause confusion, not only in the routing of messages, but in the checking and the apportioning of commissions and prorates; that the Central Union company is perfectly willing to extend to the Farmers Mutual company the use of its toll line system, but that all of the business with Lostant should be handled through the exchange of the Central Illinois company.

The complainant company at one time had an indirect connection with the Central Union company, but it appears that this connection was mutually unsatisfactory and was discontinued. The Central Union company subsequently was unable to effect any satisfactory arrangement with the complainant company for the handling of toll messages at Lostant and in consequence of this fact entered into the present agreement with the Central Illinois company.

Unquestionably the possession of a toll connection with the Central Union company is an asset of considerable value to the Central Illinois company, since if it were not for this connection most of the Lostant subscribers of the Central Illinois company would take the service of the complainant company, whose rates for local service are very much lower than those of the Central Illinois company.

To authorize the establishment of a toll connection between the Farmers Mutual company and the Central Union company through Tonica, and at the same time allow the continuance of the present arrangement between the Central Union company and the Central Illinois company, would not only result in a considerable loss to the Central Illinois company and an unnecessary expense to the Central Union company, but would also tend to aggravate and prolong the unsatisfactory competitive conditions that now exist at Lostant.

Doubtless some consideration should be given to the fact that Lostant messages destined for Ottawa and other points north, if routed via Tonica would have to be switched through only two points, viz.: Tonica and LaSalle, whereas, in routing such messages via Wenona it is necessary to switch through Wenona, Rutland and Streator. According to the evidence submitted by the defendant companies, however, approximately 75 per cent. of the toll business originating at Lostant is destined for points south, and in the absence of any proof that the route via Wenona, Rutland and Streator is impracticable for handling business to points north, it is reasonable to assume that the establishment of a toll connection at Lostant would meet the requirements of the complainant company.

While it is desirable to route all toll traffic in as direct a manner as possible, the actual mileage involved in handling toll messages is not so important a factor of transmission as the character of the line. There is nothing in the record to show that the quality of the service over the longer route is inferior; on the other hand, witness for the Central Union company testified that the service over this route is considered first class and that the length of line does not materially affect the transmission.

Practically all business houses in Lostant now have the telephones of both companies and it is not likely that the establishment of a connection between the two switchboards would result in any unusual increase in the number of toll messages to points north of Lostant, since most of the toll traffic will probably originate with the business subscribers. It is possible, of course, that such a connection might develop considerable business with LaSalle and Ottawa among the rural subscribers of the complainant company, but there is nothing in the record to substantiate such a possibility.

After a careful consideration of all the facts presented in this case, it appears that the establishment of a physical connection between the switchboards of the Farmers Mutual company and the Central Illinois company at Lostant is the only practicable manner of providing adequate toll facilities for the Farmers Mutual company.

In order to prevent injury to the Central Illinois Independent Telephone Company the terms upon which the connection should be made must be such as to prevent the loss of business by that company because of the physical connection. The law provides that the companies shall agree upon the terms and that in case an agreement cannot be reached, the Commission shall fix the terms. It is not necessary, therefore, for the Commission to fix the terms in this order.

It is, therefore, ordered, That the Central Illinois Independent Telephone Company and the Farmers Mutual Telephone Company make such physical connection be-

tween their exchanges in the village of Lostant as is required for the furnishing of toll service to the subscribers of the Farmers Mutual Telephone Company, and that such toll service be as complete as is furnished to the subscribers of the Central Illinois Independent Telephone Company.

It is further ordered, That the cost of making such connection shall be borne by the Farmers Mutual Telephone Company.

Sixty days is deemed a reasonable time within which the companies shall comply with this order.

By order of the Commission, this twenty-second day of July, 1915, dated at Springfield, Illinois.

E. F. COLWELL v. ILLIOPOLIS AND CHRISTIAN COUNTY TELEPHONE COMPANY.

Case No. 3687.

Decided July 22, 1915.

**Reconnection of Subscriber's Branch Line with Main Line of Company
Ordered — Service Ordered Resumed.**

Complainant sought a reconnection of his line with the main line of the respondent.

Respondent had detached the branch line of the complainant at its junction with the main line and had discontinued service to the complainant on the ground that the complainant's branch line, which it was the duty of the complainant to maintain, was not in good condition. Complainant subsequently repaired his line and placed it in proper operating condition and asked that it be reconnected and that service be resumed.

The respondent notified the complainant that before service could be restored he must further improve his line by placing six new poles therein.

Held: That the complainant's line was in good operating condition and that the additional poles were not necessary in order that proper service might be furnished;

That the complainant is entitled to have his line reconnected with the main line of the respondent and his telephone service resumed.

OPINION AND ORDER.

The complaint filed in this case sets forth that the complainant, E. F. Colwell, is a farmer residing in Mosquito Township, Christian County, Illinois; that the Illiopolis and Christian County Telephone Company is a public utility within the jurisdiction of this Commission and that the respondent, W. P. Elliott, is president of said company.

The complainant further avers that he is a fully paid-up stockholder on Line No. 36 of said telephone company and that on November 2, 1914, said Elliott, as president of said company, detached the side line of the complainant at its junction with the main telephone line of the company and thus discontinued telephone service to the complainant; that said respondents have continuously refused to re-connect complainant's line with the main line of the respondent company, or to furnish him with telephone service.

A copy of said complaint was served upon the respondents and the case set for hearing before the Commission at Springfield, Illinois, May 18, 1915. Notice of the time and place of hearing was also served upon the respective parties to the case.

At the hearing on the date aforesaid, *E. F. Colwell* appeared in his own behalf. No one appeared for the respondents. From the testimony introduced at the hearing, it appears that the Illiopolis and Christian County Telephone Company is an association of individuals who own and operate a telephone system consisting principally of rural lines in the vicinity of Mt. Auburn, Illinois. These lines are connected with the telephone system of, and are switched by, the Illiopolis Telephone Company, with its principal office at Illiopolis, Illinois.

The complainant, who is a stockholder in respondent association, was connected with what is known as "Telephone Line No. 36" of the respondent. Complainant's residence is located about eighty rods from the road on which the main line of the respondent company is constructed. Telephone service was furnished him over a line which he had constructed, which extended from his resi-

dence across his farm to the public highway above referred to, and then across said road, where it was connected with the main line of the respondent.

On November 2, 1914, the respondent disconnected said branch line at its junction with the main line and this discontinued complainant's telephone service. This action appears to have been taken because complainant's branch line was not in good condition, and, at the point where it crossed the public road to connect with respondent's line, it sagged to such an extent that at one time it would not clear vehicles traveling in said highway.

After the discontinuance of his telephone service, as aforesaid, the complainant repaired his line and placed same in proper operating condition. He then, in the early part of December, 1914, notified the president of the respondent association of the action he had taken and asked that his line be re-connected with the main line and that his telephone service be resumed. The respondent association thereupon sent its agents, accompanied by a telephone inspector, to examine the line and equipment of the complainant.

This inspection showed, and said inspector reported to the complainant, that the latter's telephone instrument was in good condition and that his telephone line was in fair condition with the exception of two brackets on a certain pole which were in need of repair. Said inspector recommended to complainant that he repair or replace said brackets at the first opportunity. This report seems to have been made by said inspector to the respondent.

In accordance with the recommendation of the inspector, the brackets in question were repaired by complainant and the whole line was, and now appears to be, in good condition. However, a day or two after said inspection, the respondent association notified complainant that it would be necessary for him to further improve his telephone line by placing six new telephone poles therein before his service would be resumed. This was in the early part of December, 1914, and the ground at that time was frozen hard.

It appears that it would have been very difficult to set said new poles. It also appears that complainant's line was then in good operating condition and that additional poles were not necessary in order that proper service might be furnished him.

The Commission having considered the testimony, and being fully advised in the premises, finds that it has jurisdiction of the subject matter and of the parties.

The Commission further finds that the branch telephone line constructed and maintained by the respondent is now in reasonably good operating condition and that complainant is entitled to have said telephone line connected with the main line of the respondent and, therefore, his telephone service resumed.

It is, therefore, ordered, That Illiopolis and Christian County Telephone Company and W. P. Elliott, president thereof, shall re-connect with its main line, known as "Telephone Line No. 36," the branch telephone line of the complainant at point where said branch line was disconnected, and said association shall resume the furnishing of telephone service to the complainant, and shall continue to furnish him with similar service to that furnished other subscribers and members of said association.

Ten days is considered sufficient time within which respondents shall comply with this order.

By order of the Commission this twenty-second day of July, 1915, dated at Springfield, Illinois.

EUGENE COOPER *et al.*, v. WILLIAMSVILLE-SHERMAN TELEPHONE COMPANY.

Case No. 3884.

Decided July 22, 1915.

Discontinuance of Toll Charge and Restoration of Free Service For Interexchange Messages Ordered — Improvement of Service Directed.

Complainant sought improvement of the service rendered by the respondent in the village of Sherman and the discontinuance of a toll charge imposed upon calls between Sherman and Springfield.

The respondent had for several years operated a telephone exchange at Sherman, a small village 8 miles northeast of Springfield, but had subsequently abandoned its Sherman exchange and had been serving its Sherman subscribers by means of trunk lines to its exchange at Williamsville, a city about 7 miles northeast of Sherman.

At the time of the abandonment of the Sherman exchange, Sherman subscribers had free service with Springfield, but subsequent to the abandonment, the respondent discontinued the practice of furnishing to Sherman subscribers free service with Springfield and charged them the regular toll charge that the subscribers of the Williamsville exchange were obliged to pay for connection with Springfield.

The service being furnished to Sherman subscribers was admittedly poor.

Held: That the subscribers at Sherman are not similarly situated with the subscribers at Williamsville, since the former are within a radius of 9 miles of Springfield, the county seat, and being residents of a village transact much business with that city, whereas the Williamsville subscribers are located nearly twice as far from Springfield and in or near a city;

That the discontinuance of free service was not justified;

That the toll charge for messages between Sherman subscribers and Springfield should be discontinued and free service furnished;

That the inadequacy of the service being furnished Sherman subscribers should be remedied by the construction of sufficient trunk lines between Sherman and Williamsville, the repairing and replacement of defective rural lines and instruments and the construction and maintenance of a public telephone booth at Sherman.

OPINION AND ORDER.

The complaint in this case, which was filed by a subscriber of the respondent, sets forth that on or about April 10, 1915, the respondent removed its telephone exchange from the village of Sherman to the city of Williamsville, Illinois, and that since that date it has illegally charged a toll rate for telephone service from Sherman to Springfield, where previously no charge had been made.

The complainant also charges that since the removal of said exchange the telephone service furnished by respondent has been inadequate and insufficient, and that said exchange should be returned to and again operated at Sherman.

The answer of the respondent denies that the service now furnished to its Sherman subscribers is inadequate or defective. It admits that it now charges a toll of 10 cents from Sherman to Springfield, but says that that charge is now made in order to prevent discrimination between its Williamsville subscribers, who have at all times been charged a toll rate to Springfield and its Sherman subscribers who are now connected with and considered by respondent as a part of its Williamsville exchange.

A hearing was held before the Commission at Springfield on June 29, 1915. *Alonzo Hoff*, attorney, appeared on behalf of the complainant. *Ben B. Boynton*, attorney, represented the respondent.

It appears from the evidence in this case that the village of Sherman consists of about one hundred and fifty inhabitants and is located about eight miles northeast of Springfield; that Williamsville has a population of about nine hundred and is located about seven miles northeast of Sherman and about fifteen miles from Springfield; that for a number of years the respondent company operated a telephone exchange at Sherman, and also an exchange at Williamsville. In the month of June, 1914, respondent made application to this Commission for authority to abandon its Sherman exchange and to connect its Sherman subscribers by means of trunk lines to its Williamsville exchange.

This authority was granted by the Commission in an order* entered July 31, 1914. At that time respondent had about forty-two subscribers connected with its Sherman exchange. These subscribers, in addition to their local service, had free exchange with the subscribers of the Interstate Independent Telephone and Telegraph Company at Springfield.

In pursuance of the authority granted by this Commission, respondent company in April, 1915, connected its Sherman subscribers with its Williamsville exchange and

*Sec Commission Leaflet No. 34, p. 1021.

then abandoned its central office at Sherman. About that time it also decided to, and did, discontinue free service to its Sherman subscribers with Springfield. This action was taken because of the fact that its Williamsville subscribers at no time had free service with Springfield and the subscribers formerly connected with its Sherman exchange were then connected with and considered by respondent as a part of its Williamsville exchange.

This action by respondent was opposed by the Sherman subscribers, and following the abandonment of said Sherman exchange, the service furnished to the latter subscribers apparently became inadequate and unsatisfactory. The complaint herein was then filed with this Commission.

The evidence also shows that at the present time telephone service is very poor and unsatisfactory, and the respondent practically admits this to be the case, but states that it was taking steps to improve the service by constructing additional circuits between said Williamsville and Sherman, and by the installation of a public telephone booth at Sherman at the time this complaint was filed, but after the filing of said complaint it stopped work to await the outcome of this case.

In deciding whether the respondent was justified in discontinuing to its Sherman subscribers free service to Springfield, consideration must be given to the fact that all of the forty-two subscribers in question are located inside of, or within the immediate vicinity of, the village of Sherman; that they are within a radius of about nine miles of Springfield, which is the county seat; that a large part of their business is transacted at Springfield. It, therefore, appears that the matter of free service to Springfield was of much greater importance to them than it would be to the Williamsville subscribers of the respondent.

The latter subscribers are located in, or adjacent to, a city with a population of nearly one thousand, and Williamsville is located nearly twice as far from Springfield as is Sherman. These and other factors which might be mentioned, apparently were considered by the respondent com-

pany at the time it operated a telephone exchange at Sherman and as a result its Sherman subscribers were given free exchange service with Springfield, while its Williamsville subscribers were charged a toll of ten cents. Our conclusion on this question is that the former subscribers to the Sherman exchange are not similarly situated with the Williamsville subscribers of the respondent, and that the discontinuance of free service with Springfield was not justified.

The petitioner contends that in order to remedy defective service now being furnished the former Sherman subscribers, it will be necessary for the respondent to re-install its telephone exchange at Sherman and again operate it at that point. With this we are unable to agree. On the contrary we are of the opinion that if sufficient telephone circuits are constructed between Sherman and Williamsville, and if the defective rural lines and instruments that now exist are properly repaired or replaced, and if a public telephone booth is constructed and maintained at Sherman by the respondent, that adequate service can be furnished complainant and other Sherman subscribers from the Williamsville exchange of the respondent. However, if the service is not improved and made adequate within the time hereinafter fixed by its order, the Commission will consider further the question of requiring respondent company to re-install and operate the telephone exchange at Sherman.

The Commission having fully considered the evidence and arguments of counsel, and being fully advised in the premises,

It is, therefore, ordered, That the respondent shall from and after receipt of a copy of this order discontinue the toll charge of 10 cents per message between Sherman and Springfield, Illinois, now being charged subscribers formerly connected with its Sherman exchange, and shall, until further ordered by this Commission, furnish said subscribers free service to Springfield.

It is further ordered, That the respondent shall forthwith take such steps as may be necessary to improve its

telephone service and to render same adequate, and to that end it shall construct and operate such additional telephone circuits between Williamsville and Sherman as may be necessary. It shall also construct and maintain a public booth at Sherman and it shall repair or replace such of its telephone equipment as is defective and shall take whatever other action may be necessary or proper to comply with this order. Sixty days is considered sufficient time within which respondent shall comply with this portion of the order in this case.

The Commission reserves jurisdiction of the subject matter and of the parties for the purpose of entering such additional or supplemental order herein as the facts may from time to time warrant.

By order of the Commission, this twenty-second day of July, 1915, dated at Springfield, Illinois.

LOUISIANA.

Railroad Commission.

**THE POSTAL TELEGRAPH-CABLE COMPANY OF TEXAS *ex parte*.
APPLICATION TO CLOSE TELEGRAPH OFFICES.**

Order No. 1917.

Decided July 20, 1915.

Discontinuance of Telegraph Offices Authorized Where Revenues are Insufficient and the Community is Adequately Served by Other Companies.

ORDER.

The Postal Telegraph-Cable Company of Texas has made application to the Commission for permission to discontinue certain telegraph offices on the Louisiana and Arkansas Railway in Louisiana. Due notice of the application was served on all interested parties, and the case was taken up for hearing and investigation on June 22, 1915.

The offices which it is desired to discontinue have been handled by the agents of the Louisiana and Arkansas Railway Company on a commission basis, and the total receipts average for each office only about \$10.00 per month. The contract between the telegraph company and the railroad company will expire July 1, 1915. It is not practicable, under the scant revenues received by the offices in question, for the telegraph company to establish independent and separate telegraph offices. The public will not be deprived of communication on account of the discontinuance of the offices, for the reason that the points where The Western Union Telegraph Company has no office are served by the Cumberland Telephone and Telegraph Company.

C. L. 45]

Notices of the application of the telegraph company for the abandonment of these offices have been served on officials at each of the points interested, and no objection has been filed, save in the cases of Castor, Spring Hill, Ashland, Jena and Good Pine. The Commission will, therefore, in these cases, consider that the failure to file protest or objection is an acquiescence in the application of the telegraph company, and will grant the request. In so far as Castor, Spring Hill, Ashland, Jena and Good Pine are concerned, the request of the telegraph company will be held in abeyance until such time as further investigation can be made.

It is, therefore, ordered, That the application of the Postal Telegraph-Cable Company of Texas, for authority to discontinue its telegraph offices at Alberta, Chestnut, Cotton Valley, Dry Prong, Georgetown, Goldonna, Heflin, Minden, Packton, Sarepta, Sibley, Trout and Winnfield, be, and the same is hereby, granted.

Baton Rouge, Louisiana, July 20, 1915.

MASSACHUSETTS.

Public Service Commission.

PETITIONS OF REPRESENTATIVE MAURICE CARO AND REPRESENTATIVE WILLIAM N. CRONIN FOR THE INSTALLATION BY THE NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY OF METERS FOR MEASURED SERVICE SUBSCRIBERS.

P. S. C. 645.

Decided July 14, 1915.

Installation of Meters to Record Number of Calls of Measured Service Subscribers Authorized — Meter Rental Fixed.

Petitioners sought to require the New England Telephone and Telegraph Company to equip the telephones of measured service subscribers with meters to record the number of calls made by each subscriber.

Under the existing method of registering the number of telephone calls, mistakes occasionally occurred, but the opportunity for such errors had been minimized by a requirement by the company that the operator report "No charge" on uncompleted calls. Possible mistakes were as likely to favor the subscribers as frequently as the company.

Held: That a meter which will register every local message should be available, upon payment of a reasonable charge therefor, to any measured service subscriber who desires it;

That a sub-station meter controlled from the central office such as is now supplied by the company, is best adapted to the conditions of the metropolitan district of Boston, as the only other meters that are workable cause a slowing up of service;

That a charge of \$1.50 per year or any fraction thereof should be made for installing and maintaining such meters.

OPINION AND ORDER.

These were petitions to require the New England Telephone and Telegraph Company to equip the telephones of measured service subscribers with meters or registers to record the number of calls used by each subscriber.

C. L. 45]

At the public hearing upon these petitions it was suggested that meters should be provided by the company for all measured service subscribers without additional charge. It was claimed that the company's record of measured service calls under existing methods was inaccurate, and that the installation of some form of automatic recording device was necessary in order to protect measured service subscribers from overcharges.

It was not denied that under certain conditions mistakes in registering the number of telephone calls could and did occur, notwithstanding the greatest care and efficiency on the part of the company's employees. The opportunity for such errors has, however, already been minimized, as the result of a suggestion by the Commission that the company require the operator to report "No charge" on uncompleted calls. It has also been the practice of the Telephone and Telegraph Department of the Commission, in case of dispute in regard to the accuracy of the company's record, to make an investigation with a view to securing an equitable adjustment. The entire problem is being studied by the Telephone and Telegraph Department of the Commission in order to determine the practicability of changes in present operating methods which will secure a still higher standard of accuracy in the company's records of measured service calls.

As the margin of error under the company's present recording system appears to be slight, and is likely to favor the subscriber as frequently as the company, the Commission believes that it would not be in the public interest to require it to provide meters for all measured service subscribers, as the cost of such meters, whether it is made a separate charge or included in the flat rate, must ultimately be borne by the subscribers. The Commission is, however, of the opinion that a meter should be available upon payment of a reasonable charge therefor, to any subscriber who desires it, either for the purpose of controlling the unauthorized use of his telephone or for the purpose of en-

abling him to compare the record made by the meter with the number of messages for which he is charged.

For something more than a year the New England Telephone and Telegraph Company has been installing, upon the request of a subscriber, a meter which is operated by the operator at the central office, and for which an annual charge of \$3.00 is made. Prior to and since the hearing on these petitions the Telephone and Telegraph Department of the Commission has made a thorough inquiry into the practicability of the meters now in use in the territory of other telephone companies. The only other meters shown to be workable are those operated by the Southern New England Telephone Company of Connecticut, and the Keystone (Independent) Company of Philadelphia, each with a limited number of measured service subscribers.

The operation of these meters is similar to that of the pay station. The operator secures and holds the party called until the calling party has recorded a call upon the meter at his station, after which the connection is completed. Tests made by the inspectors of the Telephone Department of the Commission demonstrate that there is an appreciable slowing of service under such operation. Whatever the effect might be in an ordinary exchange, with a limited number of measured service subscribers, any change in the operating practice which would result in the slowing of calls from measured service stations from four to seven seconds each, in a territory like the metropolitan district of Boston, with its great telephone population very properly demanding the highest grade of service, and with 32 per cent. of the stations in the State upon a measured service basis, would seriously impair the present standard of service.

The Commission is therefore of the opinion that in spite of the somewhat higher cost, a sub-station meter controlled from the central office, such as is now supplied by the company, is best adapted to the conditions of the metropolitan district. The meter which the New England Telephone and Telegraph Company now installs upon application is

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practically the device which has been in operation in Baltimore, Maryland, and for which the Maryland Public Service Commission in a decision rendered January 2, 1912, *In the Matter of the Chesapeake and Potomac Telephone and Telegraph Company, of Baltimore City, Relative to Rates*, established an annual charge of \$3.00. Since that decision improvements have been perfected which, in the judgment of the Commission after investigation, should enable the New England Telephone and Telegraph Company to install and maintain such meters at an annual charge not exceeding \$1.50 instead of the present annual charge of \$3.00

It is, therefore, ordered, That the New England Telephone and Telegraph Company shall equip the telephone station of any subscriber who shall make a request therefor with a suitable registering device which will immediately register every local message charged to his account; and, without undertaking to designate the specific device to be used for that purpose, jurisdiction over and the right and power to supervise, regulate and control such registering device, as well as every other instrumentality employed in the telephone service, is hereby expressly reserved to the Commission. The said company is hereby authorized to charge a sum not exceeding \$1.50 a year or any fraction of a year for installing and maintaining each registering device furnished.

Dated July 14, 1915.

NEBRASKA.

State Railway Commission.

IN THE MATTER OF THE APPLICATION OF THE PEOPLE'S TELEPHONE COMPANY, OF STERLING, NEBRASKA, TO ISSUE AND SELL ITS STOCK IN THE SUM OF \$50,000.

Application No. 2236.

Decided June 3, 1915.

Issue of Stock Authorized for Construction of Second Exchange although Public Convenience and Necessity Did Not Require Construction of Such Exchange — Jurisdiction of Commission Discussed — 8 Per Cent. Ordered Set Aside for Maintenance and Reserve for Depreciation.

Petitioner sought authority to issue and sell \$50,000 of stock for the purpose of constructing and operating a telephone exchange at Sterling.

The Lincoln Telephone and Telegraph Company, which was already operating an exchange at Sterling, intervened and filed its objection, claiming that it was furnishing good commercial service, both local and long distance, at rates approved by the Commission, which rates did not even provide revenue sufficient to pay operating expenses, maintenance charges, reserve for depreciation, and a fair return on the capital invested, and alleging that the applicant would be unable to furnish service at lower rates or to furnish toll connection and long distance service to other exchanges in Johnson County. Intervenor further alleged that the construction of the proposed exchange would force upon subscribers the burden of maintaining duplicate telephone systems, that no public necessity would be subserved and that the granting of the petition would ultimately lead to loss of capital by investors and would cause great damage to the intervenor.

Held: That although public convenience and necessity do not require the construction and operation of a second telephone exchange at Sterling as the present service is adequate and the rates reasonable, the Commission is without jurisdiction to deny the application;

That the applicant must be authorized to issue \$21,500 of stock, that being the amount necessary for the purposes provided by the statute and reasonably required for the purposes of the corporation;

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That the applicant should be required to set aside annually from its operating income for maintenance and reserve for depreciation a sum not less than 8 per cent. of its property value.

Dissenting Opinion of Commissioner Hall.

Dated July 1, 1915.

Commissioner Hall vigorously dissented from that part of the opinion of the majority that held that the Commission was without power to deny the present application and contended that under the general powers granted by the Constitution, the Commission, in the absence of specific legislation prohibiting the same, could deny this application for the approval of an issue of stock on the grounds that the construction for which the proceeds of the stock were to be used was not demanded by public convenience and necessity and that should the second company attempt to operate in the community failure was imminent on account of destructive competition.

APPEARANCES:

Geo. A. Adams and E. Ross Hitchcock, for applicant.

Edgar M. Morsman, Jr., for Lincoln Telephone and Telegraph Company.

OPINION.

CLARKE, Chairman:

The petitioner herein is a corporation organized under the laws of Nebraska for the purpose of building, maintaining and operating telephone properties, with an authorized capital of \$50,000. Its organization shall be complete upon \$10,000 of its capital stock being subscribed for. Under its articles its highest amount of indebtedness shall not exceed one-third of its capital stock.

It asks for authority to issue and sell its capital stock in the amount of \$50,000. It appeared from the petition and accompanying papers filed therewith, to-wit, articles of incorporation, franchise in village of Sterling, Nebraska, preliminary plans and specifications, etc., that it proposed to construct and operate a telephone exchange at and in the vicinity of Sterling, Nebraska.

The Lincoln Telephone and Telegraph Company filed objections to the granting of the petition, in which, among other things, it was alleged that it owned and operated a

telephone exchange in and about Sterling, serving approximately 418 business, residence and farm subscribers; that through said exchange and its connection, long distance service is furnished the subscribers thereof to practically all points in the United States; that the local and long distance service to the other exchanges in Johnson County and the rates in effect have been filed with and approved by this Commission; that the said rates fail to provide revenue sufficient to pay operating expenses, maintenance charges, depreciation and a fair return on the capital invested.

Intervenor further alleged that the applicant will be unable to furnish telephone service at any lower rates than those charged by the intervenor; that it will be unable to furnish its subscribers with toll connections and long distance service to the other exchanges in Johnson County and surrounding territory, thereby forcing upon said subscribers the burden of maintaining duplicate telephone systems.

Intervenor further alleged that the construction of the proposed exchange will be detrimental to public interests; that there is no public necessity for the same, and that the granting of the petition herein will ultimately lead to the loss of capital by investors, and will inflict great loss and damage upon the intervenor.

The evidence adduced at the hearing and the records on file with the Commission show that the telephone exchanges in Johnson County were formerly owned and operated by the Nebraska Telephone Company and the Johnson County Home Telephone Company. The competition between the two companies was bitter. The latter company during the last four years of its operation failed to declare any dividends on its common and preferred stock, aggregating \$63,000. The Lincoln Telephone and Telegraph Company in 1911 and 1912 purchased and merged the two companies, with the approval of this Commission. The holders of the Johnson County Home Telephone Company's 8 per cent. preferred stock accepted and received 5 per cent. non-voting preferred stock in the Lincoln company, and the holders of the common stock received nothing.

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Subsequent to the consolidation, the Lincoln company applied to the Commission to increase its rates, etc., at its various exchanges in Johnson County, including Sterling, and the Commission, after an exhaustive engineering and accounting investigation and a full hearing, approved the application in certain particulars, and prescribed a reasonable schedule of rates. The engineering department of the Commission made a service study at the Sterling exchange, and reported the present service as reasonably good. The Lincoln company sent through the mails a letter to each of its 398 subscribers, enclosing return postal cards addressed to the company. Printed on said cards were the questions:

1. Is your present telephone service good?

2. Are you in favor of two telephone systems in Sterling?

The company received through the mails 109 of said cards. In answer to the first question, 88 answered "Yes," 3 answered "Fair," 12 answered "No," and 6 made no answer. In answer to the third question, 104 answered "No."

Two issues are presented by the pleadings and the evidence: First, has the Commission power to deny the application on the ground that the public necessity and convenience does not require the construction and operation of a second telephone exchange at Sterling; second, if not, how much stock is reasonably required for the purposes of the applicant.

The Commission, in the *Application of the Omaha, Lincoln and Beatrice Railway Company** for authority to issue securities (Application No. 1651, Sixth Annual Report, page 255), in which certain intervenors objected and raised the question of public necessity and convenience, held:

"While the Commission, under the constitutional amendment creating it, might, in the absence of specific legislative enactment restricting it, and in the exercise of its authority in the approving of stock and bond issues, withhold its approval of such issues of proposed competing public utility,

*See Commission Leaflet No. 16, p. 619.

on the ground that the public convenience did not require the construction of such utility;

Held: That the exercise of such authority involves such grave responsibility and is so far-reaching in its effects that the Commission will not exercise it unless specifically directed so to do by the legislature."

The foregoing may be considered in the nature of *obiter dicta*, inasmuch as the Commission in that case found that the facts submitted would not justify the refusal of the permit on its merits, even though the Commission had assumed authority to refuse same on the grounds of public necessity and convenience.

The present case, however, presents the issue squarely, inasmuch as the Commission is unanimously of the opinion that public necessity and convenience does not require the construction and operation of a second telephone exchange at Sterling. We would unhesitatingly deny the application were our authority under the law clear and unquestioned, for it clearly appears from the record that the territory to be served is already being furnished good commercial telephone service by the Lincoln Telephone and Telegraph Company at reasonable rates fixed by this Commission; that the said company purchased its exchange at Sterling and issued its securities in payment thereof under the approval of this Commission; that it is ready and willing to furnish service to any and all parties desiring same at rates prescribed by the Commission; that the sole and only reason for the building of the second plant is the hope and expectation that the petitioner herein can successfully furnish good service at a lower schedule of rates than the present schedule fixed by this Commission. To what extent this presumption or expectation has been created in the minds of the organizers of the petitioner company by representatives and salesmen of companies manufacturing and selling telephone equipment and supplies, is conjectural. That they have contributed in some degree is beyond question. The representative of one of the supply and manufacturing companies was the principal witness for the petitioner, and his estimates as to cost, exclusive

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of items omitted, particularly the labor costs, were based on the assumption that the stockholders of the company would furnish the labor necessary to put the property in place, ready for operation, at less than such work can be obtained or contracted for under average or ordinary conditions. Operating estimates submitted by the same witness are subject to the same criticism.

In addition thereto is the history of the telephone companies in this State, and in Johnson County. One of two results accompany the operation and maintenance of two competing telephone exchanges in the same community. Either one or both exchanges is operated without profit, and an ultimate loss to the stockholder and investor, or an extra burden is borne by the subscriber who is required to pay for, and maintain, two telephones. In addition thereto is the inconvenience attached to such situation, which eventually becomes so unbearable or burdensome to the public that a consolidation is demanded.

The statute under which the application is made is as follows:

"Public Service Corporation—Issue of Stocks, Bonds or Notes.—A common carrier of public service corporation organized and incorporated or hereafter incorporated, under or by virtue of the laws of the State of Nebraska, may issue stocks, bonds, notes or other evidence of indebtedness payable at periods of more than twelve months after the date thereof, when necessary for the acquisition of property, the construction, completion, extension or improvement of facilities, or for the improvement or maintenance of its service, or for the discharge or lawful refunding of its obligations, provided and not otherwise, there shall have been secured from the Nebraska State Railway Commission an order authorizing such issue and the amount thereof, and stating that in the opinion of the Commission, the use of the capital to be secured by the issue of such stock, bonds, notes or other evidence of indebtedness is reasonably required for the said purposes of the corporation." Paragraph 758, Section 210. Revised Statutes of Nebraska of 1913.

The objectors insist that the words "when necessary" and "reasonably required", used in the statute, should be construed in a broader and wider sense than the determination as to whether or not the expenditures are for the cer-

tain purposes provided in the statute, are not excessive in amount and are reasonably required for the said purposes of the corporation, and that the Commission in its discretion can read into the statute the words "when necessary or reasonably required *for the public good or welfare.*"

It is a clearly established rule of statutory construction that when the words of a statute are plain, direct and unambiguous, an interpretation is unnecessary (*Stoppert v. Nierle*, 45 Neb. 105), and that the language employed in the statute should be generally given its plain, obvious import (*Simmerman v. State*, 14 Neb. 568).

There can be no question but that the present statute is plain, direct and unambiguous. Its evident intent and purpose is the prevention of the issuance of watered stock, etc. To give it the meaning and interpret it in the manner insisted on by counsel for the intervenors would involve the reading into the statute an exception not made by the statute, i. e., *except only when it is a matter of public necessity and convenience*, a corporation may issue its securities when necessary for the purposes of construction, etc., and when it shall have secured from the Commission a finding that the capital to be secured is reasonably required for the purposes of the corporation.

The practice of reading into a statute exceptions not made by the legislature is not countenanced by our own court. (*Siren v. State*, 78 Neb. 778).

It may be contended that the Commission, under the authority and powers conferred under the amendment to the Constitution creating it, might deny the application of the petitioner.

The Commission has heretofore held that under the said amendment it might, in the absence of legislative enactment restricting it, deny this and similar applications on the ground that the public necessity and convenience did not require the construction of the proposed utility (*Application of Omaha, Lincoln and Beatrice Railway Company*,* No. 1651, *supra*).

*See Commission Leaflet No. 16, p. 619.

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The statute, however, under which this application is filed, is specific legislation, directing this Commission to authorize the issuance of securities under certain conditions, none of which, as heretofore set forth, are predicated on the question of public necessity and convenience, and a mandamus would lie against the Commission were it to refuse the application on that ground.

In recent sessions of the legislature, subsequent to the enactment of the statute in question, bills requiring public service utilities to secure a certificate of public necessity and convenience before commencing operations or making extensions, have been introduced, but failed of passage.

The Commission is fully cognizant of the evils involved in the duplication of service in public utilities. The greater possibilities of financial loss on the part of investors involves a greater risk, which must be considered by the Commission in determining a reasonable rate of return. As the law now stands, the power to correct this condition lies with the legislature and not the Commission.

The remaining question to be determined is the amount of stock which petitioner should be authorized to issue. It petitions for authority to issue \$50,000 of its stock. It expects to serve not less than 195 subscribers in and around Sterling, with an additional 105 subscribers in prospect.

The estimates submitted by the applicant aggregated \$12,477.92 for the 195 subscriber exchange, and \$15,627.96 for the 300 subscriber exchange. As previously stated, the above estimates were based upon the assumption that much, if not all, of the labor necessary to put the property in place would be furnished at less than the average or ordinary cost for such work. Certain items of expenditures unnecessary to enumerate were omitted.

The Commission's engineer, from the specifications and data furnished, estimates that it will cost \$15,455.14 to construct the property, to serve 195 subscribers, and \$20,956.88 to serve 300 subscribers.

While it is possible that petitioner, by reason of local interest, etc., may secure the labor items at less than the

ordinary or average cost, the Commission cannot rely on such assurance in the absence of actual contracts entered into with reliable parties, and must therefore base its conclusions on the estimates of its engineer. The applicant hopes to extend its plant and service throughout the entire county, but for the present its activities will be limited to Sterling and vicinity. No allowance has been made by the Commission's engineer for working capital. Not less than \$500 should be allowed for this purpose.

Upon consideration of the evidence the Commission finds that the sale and issue of \$21,500 of stock by the petitioner is necessary for the purposes provided by statute and reasonably required for the purposes of the corporation.

Petitioner submitted an estimate of its operating revenues and expenditures. This estimate is subject to the same criticism as the estimate of cost of construction. If applicant's subscribers, by reason of the lower rates contemplated, will accept a more restricted and limited service, or if the company can operate at less than the ordinary cost, future experience will alone determine. In any event, applicant should be required to set aside from its operating income, as a maintenance and depreciation fund, a sum not less than 8 per cent of its property investment.

ORDER.

It is, therefore, ordered, That the People's Telephone Company, of Sterling, Nebraska, be, and the same is hereby, authorized to issue and sell, at par, its capital stock in the sum of \$21,500; *provided*, however, no stock shall be sold or issued until there shall have been \$10,000 of said stock subscribed for; *provided further*, that the proceeds thereof shall be used for the purposes named in the application and none other.

It is further ordered, That the said company shall file reports with the Commission, showing in detail the amount of stock sold and the application of the proceeds thereof, within thirty days of the time when the unreported amount thereof shall aggregate the sum of \$2,500.

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It is further ordered, That the said company be, and the same is hereby, directed, prior to the payment of any dividends on the stock so issued, to set aside out of its operating income, as a maintenance and depreciation fund, an amount not less than 8 per cent. of its property investment. All maintenance, depreciation and replacement expenditures shall be charged to the fund so created. If in the early years of the company's operations this fund shall accumulate, and it is desired to invest the same in extensions and betterments to the property, leave so to do is hereby granted; *provided*, however, that a proper and detailed system of accounting shall be maintained, which shall disclose the correct charges and credits to maintenance, depreciation and property investment.

Entered at Lincoln, Nebraska, this third day of June, A. D. 1915.

DISSENTING OPINION.

July 1, 1915.

HALL, *Commissioner*, (*dissenting*):

The constitutional amendment and all statutes conferring jurisdiction of rates and service of all common carriers, on the Commission, makes the paramount duty of the Commission the protection of the right of the public in so far as the powers conferred will enable it to do so. The amendment above referred to was adopted by the people in 1906.

It provides that

"The powers and duties of such Commission shall include the regulation of rates, service and general control of common carriers as the legislature may provide by law. But in the absence of specific legislation, the Commission shall exercise the powers and perform the duties enumerated in this provision."

The last sentence quoted is a direct command to the Commission ("the Commission *shall* exercise the powers and perform the duties enumerated in this provision"), which makes it incumbent upon the Commission to take jurisdiction over all rate and service questions of common carriers,

even in the absence of any legislation. If the Railway Commission Act, nor any of the subsequent acts pertaining to rates and service, had not been passed by the legislature, it would have been the duty of the Commission to formulate rules and establish precedents by which it would take jurisdiction of all rate and service questions.

A brief consideration of the language will show that very wide discretion has been conferred upon the Commission and that it imposes a duty upon it which "is in its essential nature plain and simple, however difficult or complex its practical execution may be."

It is common knowledge of all who are familiar with the history of the adoption of this amendment that the people intended to clothe the Commission with power sufficient to do the things that it has been directed to do. By the amendment the people repudiated the theory that competition would regulate rates and service and do equity between the people on the one hand and the utilities serving the people on the other.

It is impossible to think of rates without at the same time thinking of all operating expenses, including maintenance, depreciation, taxes, losses and damages, all of which must come from the operating income before a surplus is created out of which dividends are to be paid to those who have devoted their property to a public service, at some rate of interest upon some amount of money. This immediately raises the question of capitalization.

It is impossible to think of service without thinking of facilities because the term service taken in its most inclusive sense means facilities. The equipment and facilities of a utility have very much to do with the service. The character and efficiency of telephone service depends largely as to whether the circuits are "grounded" or are "metallic," and if "metallic" whether copper or iron, whether what is known as a common battery system or a central energy plant. The value of the service also depends on the number of subscribers on the system, and this immediately raises the question as to the number of tele-

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phone systems occupying the same field, because a subscriber is compelled to place upon his desk as many 'phones as there are systems serving the community in which he lives, if he is [to be] able to reach all telephone patrons of that community. This immediately raises the question of duplication of properties and overcapitalization in plant facilities.

It is just as impossible to think of the reasonableness of a passenger fare without thinking of the character and quality of the car that you ride in, as to think of the reasonableness of the rent of a house without thinking of the character, quality, dimensions, plans and specifications of the house. This may be illustrated in the case of a connecting switch between two competing railroads. The service might be much more efficient by reason of a connecting switch, because the length of haul would be shorter and the time in transportation less which would result in better service at a less cost and a lower rate than would have to be paid if freight had to be shipped by a more circuitous route, by reason of the lack of such connecting facilities. It is therefore impossible to think of rates without thinking of service and facilities.

The business of a common carrier is to sell service, and it is the duty of the Commission to see to it that the most efficient service possible is delivered for the lowest possible rate, always having due regard for necessary operating expenses (using the term "operating expenses" in its most inclusive sense), and a fair return on a judicious investment of capital.

If under the Constitution, the Commission has the power to limit the return upon the capital investment after all operating expenses have been provided for out of operating income, I am of the opinion that it has the power to limit the sale of securities to the capital investment, plus a reasonable commission for sale of and discount on the securities. However, be that as it may, the Commission was organized in March, 1907, and for the first two years of its existence nothing was done in matters of capitali-

zation. Common carriers and all public utility corporations were financed in the same old way. Stock, bonds and all other evidences of indebtedness were issued and floated upon the market without restriction and the purchasers of those securities have always been and are now knocking at the doors of this Commission praying for rates to be made that will create a net surplus, after all operating expenses have been defrayed, that will pay fixed charges and dividends on such securities. The Commission looked on, believing itself to be powerless, under the provisions of the Constitution, to prevent such evils.

In 1909 the attention of the legislature was called to the matter and it enacted what is known as the "Stock and Bonds Act," Section 758, Article 18, Chapter 14, of the Revised Statutes of Nebraska for 1913. The act was copied from the New York statutes, and I am following the rules of procedure and regulations that have been promulgated and adopted by those two great Commissions and sustained by the courts of that State.

"Section 1. A common carrier or public service corporation organized, incorporated or hereafter incorporated, under or by virtue of the laws of the State of Nebraska, may issue stocks, bonds, notes or other evidence of indebtedness payable at periods of more than twelve months after the date thereof, when necessary for the acquisition of property, the construction, completion, extension or improvement of facilities, or for the improvement or maintenance of its service or for the discharge or lawful refunding of its obligation, *provided*, and not otherwise, that there shall have been secured from the Nebraska State Railway Commission an order, authorizing such issue and the amount thereof, and stating that in the opinion of the Commission, the use of the capital to be secured by the issue of such stocks, bonds, notes or other evidences of indebtedness is reasonably required for said purposes of the corporation * * *

I am of the opinion that the words "when necessary" and "reasonably required for said purposes of the corporation" when properly construed mean that the proceeds of the sale of the securities authorized by the Commission are necessary and reasonable to purchase and install public utility equipment that is reasonable and neces-

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sary to furnish the service demanded. Look at it from any angle you may, it ultimately resolves itself into a question of service and the rates that must be paid for service.

In brief analysis of this statute, when read with the constitutional amendment, I shall show that vast powers and broad discretion have been conferred upon the Commission and that a duty and great responsibilities have been imposed upon it from which it dare not shrink, if Commission control and regulation is to protect the purchasers of public utility securities and do equity to the public on the one hand and to those who serve on the other.

Doubtless, the purpose of the act is, (1), to protect investors in the securities of common carriers over which, under the Constitution, the Commission has jurisdiction of *rates, service and general control*, and, (2), to protect investors in securities of all other public utilities that are not common carriers, such as water works, gas and electric light plants, etc., not municipally owned, which must acquire a franchise to operate and the right to use public grounds, streets, alleys and public highways upon which to construct and maintain the facilities incident to and necessary for the purpose of selling service to the public, over which the legislature or some division of the State has jurisdiction of rates and service. It may be noted here that the Constitution conferred jurisdiction of rates and service, and by a necessary implication capitalization, of *common carriers* upon the Commission, while the Stock and Bonds Act says "a *common carrier* or *public service corporation* * * * * may issue securities * * * *", leaving the question of the regulation of rates and service of all utilities that are not common carriers to other authorities than that of the Commission; (3), for the Commission to determine by judicial investigation the capital to be used as a basis upon which percentages are to be calculated for the purpose of determining the amount of money necessary to be raised by rates, to take care of all current maintenance and depreciation, and the amount of money upon which the investors are entitled to dividends.

It logically follows, that the amount of outstanding liabilities authorized to be issued by the Commission should approximately equal the cost of the assets that are reasonable and necessary for the corporation in its public service.

In the case of the *Omaha, Lincoln and Beatrice Railway Company** for authority of the Commission to issue securities, referred to in the majority opinion herein, the majority of the Commission said that:

"The approval of the Commission of the issuance of securities does not constitute a guaranty in any way that rates may be charged by such corporation to enable it to pay dividends at any given rate upon its entire capitalization. Whenever the Commission is called upon to exercise its rate-making power, its action will be controlled by the amount of money shown to have actually been invested and the fair value of the property devoted to public uses, regardless of the amount of securities outstanding."

I was of the opinion then, and am now, that the majority of the Commission was wrong in this. Stock and bond issues in excess of the amount of money that has been invested that became outstanding liabilities prior to the creation of the Commission is one thing which state and federal commissions are, and will be, compelled to disregard; but outstanding liabilities that have been approved and authorized by the State is another, and when the purchaser has invested his money in securities upon which the stamp and seal of the State has been placed, he has a right to expect that the utility will be granted a rate as high as "the traffic will bear" until the net surplus is sufficient to take care of all fixed charges on bonds and preferred stock, and then a reasonable return upon the common stock that has been authorized by the Commission. (*Niagara Light, Heat and Power Company*, 2 P. S. C. R., 2nd Dist. N. Y., 110, 113).

By the term "what the traffic will bear" I mean a rate, under which the greatest amount of traffic will move and at the same time produce the greatest net surplus out of which fixed charges and dividends are to be paid. This

*See Commission Leaflet No. 16, p. 619.

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rate should not be reduced until the net surplus is greater than is necessary for the above purposes.

In the *Matter of the Delaware and Hudson Company for Authority to Issue Securities*, Section 55 (of which the Nebraska Act hereinbefore referred to is a copy) of the Public Service Commissions Law [was before the Commission] (Public Service Commission Reports, 2nd Dist. N. Y., Vol. 1, page 392). This case went to the New York Court of Appeals, and the court held Volume 197, page 1:

"The paramount purpose of the enactment of the Public Service Commission law was the protection and enforcement of the rights of the public. One of the legislative purposes in the enactment of the statute was to prevent the issue of stocks and bonds by public service corporations if, upon investigation of the facts, it was found that they were not for the purposes of the corporation enumerated in the statute and reasonably required therefor." * * *

People ex rel. Edison Company v. Willcox, 207 N. Y. 93, Mr. Justice Cullen, writing the opinion said:

"The law was enacted in response to a pronounced and insistent public opinion and was a radical and important modification of the relations and of the policy of the public toward the corporation which are its subjects. Its paramount purposes was to protect and enforce the rights of the public. It made the commissions the guardians of the people by enabling them to prevent the issue of stock and bonds for other than statutory purposes or in appreciable or unfair excess of the value of the assets securing them."

We have under consideration three questions which are fundamental: (1), the protection of the public in making investments in public utility securities; (2), rates to be paid by the public and, (3), the sale of services which is the purpose of the utility, and in considering service it is necessary to consider plant facilities.

If there is an overcapitalization in plant facilities, because there is one plant serving that is entirely too large for the service demanded, or two or more plants of which the sum total of plant is more than the service demands, the effect is the same and rates will necessarily have to be higher than should be paid for economic service, if investors receive a fair return upon their investment.

In considering the administration of the Stock and Bonds Act, we find that the legislature has not laid down any rules of procedure which shall govern the Commission. That apparently has been left to the Commission. It must create its own rules and establish precedents as guides for the future, and all rules, regulations and requirements adopted by the Commission that are reasonable and necessary to carry out the spirit and intent of the law, would be upheld by the courts, although specific legislation may not be found in the statutes.

That the Commission may be able to certify that a certain amount of securities are reasonable and necessary, it should require the applicant to make the following showings:

1. All applications for such authority should be made by petition and verified by the president or other officer of the corporation.

2. Attached to and made a part of said petition, should be the following exhibits: (a) A certified copy of the applicant's articles of incorporation and all amendments thereto, if any, certified to by the Secretary of State and the county clerk; (b) Duly certified copies of all certificates, statements or records, which modify, change or extend the purposes or powers of such corporation showing when and where such documents were filed. (c) Duly certified copies of any certificates, record or order required by law to be made or filed, in order to authorize the corporation to exercise any of its franchises or rights.

3. The petition should contain: (a) A sworn statement in detail of the financial condition of the company, giving the amount and kind of capital stock outstanding, and the rate and amount of dividends declared thereon during a reasonable number of years immediately preceding the time of the hearing, the outstanding indebtedness, whether and how secured, and if secured by mortgage or pledge, a copy of the instrument should be annexed to the petition; a description of the properties, and in general terms of its equipment, and a statement of the cost of its existing prop-

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erty. It should contain a statement of the amount of any of its stock held by other corporations and their names and the amount held by each. (b) A statement of the amount and kind of stock which the corporation desires to issue, and if preferred, the rate of dividends secured to be paid by it and whether cumulative, a statement of the amount of bonds, notes and other evidence of indebtedness which the corporation desires to issue, the terms, rate of interest, and whether or how to be secured, and if to be secured by a mortgage or pledge, and the terms thereof. (c) A statement of the use to which the capital to be secured by the issue of such stock, bonds or other evidence of indebtedness is to be put, with a definite statement of how much is to be used for the *acquisition of property*, how much for the *construction, completion, extension or improvement of facilities*, how much for the *improvement of its service*, how much for the *maintenance of its service*, and how much for the *discharge or refunding of its obligations*. (d) A statement in detail of the property which is to be acquired, with its value, a detailed description of the construction, completion, extension or improvement of facilities, set forth in such a manner that an estimate may be made of its cost, a statement of the character of the improvement of its service proposed and all the reasons why the service should be maintained from its capital; if it proposes to discharge or refund its obligations, a statement of the nature and description of such obligation, including their par value and the amount for which they were actually sold, and the application of the proceeds. (e) A statement showing whether any contracts have been made for the acquisition of such properties or for such construction, completion, extension or improvement of facilities, or for the disposition of any of its stock, bonds, notes or evidence of indebtedness which it is proposed to issue, and if such contracts have been made, copies thereof should be annexed to the petition. (f) A statement showing whether any of the outstanding stock or bonds or other obligations of the company have been

issued, or used in capitalizing any franchise or any right to own property, or enjoy any franchise or any contract for consolidation or lease and, if so, the amount thereof and the franchise, right, contract or lease so capitalized. (g) If the stock is to be issued by a corporation formed by the merger or consolidation of two or more other corporations, the petition should contain a complete statement of the financial conditions of the corporation so consolidated, as set forth in subdivision (a) herein, and of their capital stock and of the par value thereof. (h) The petition should contain a statement of all other facts pertaining to the application.

4. Upon the receipt of said petition, the Commission should fix a time and place for hearing thereon and should give the applicant a reasonable notice thereof; the applicant should be required to have published a notice of the application and of the time and place of the hearing in such newspapers and at such times as the Commission shall direct. The Commission should prescribe the terms and contents of such publication.

5. At the hearing, the applicant should produce such witnesses and furnish such books, papers, documents and contracts as the Commission shall at any time before final decision on the application require, and to establish to the satisfaction of the Commission that the proposed issue of stock, bonds, notes or other evidences of indebtedness is for the benefit of the public service. (See *Rules of Procedure under the Stock and Bonds Act*, Public Service Commission Reports, 1st Dist., N. Y.)

At this point it may be well to call attention to Section 5 of said rules, by which the Commission requires all applicants for the authority of the Commission to issue securities to show to the satisfaction of the Commission that it is for *the benefit of the public service*. If the Commission is to protect the public and if it stand as the special representative of the public in its relation to all public utilities, the first duty imposed upon it when an application is made for its authority to issue securities is to exam-

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ine into the legal status of the applicant. The act provides that a "common carrier or a public service corporation organized and incorporated * * * under and by virtue of the laws of the State of Nebraska may issue securities * * * provided and not otherwise that there shall have been secured from the Commission an order authorizing such issue." Certainly the first thing an investor would want to know is that the applicant had complied with all the laws of the State affecting its organization and incorporation, and that it is the duty of the Commission to know that the company is legally incorporated before it places its approval upon the sale of securities.

The second duty of the Commission comes under the heading 2 (c). The Commission should examine into the franchise of the applicant granted to it by the municipality in which it is operating, or is to operate, by which authority is granted to the utility for the use of public grounds, streets and alleys upon which to construct and maintain facilities necessary for the operation of the public service business. It necessarily follows that the Commission should require the applicant to file with it copies of all franchises, certified to by the proper municipal authorities. No prudent investor would want to purchase securities of a utility, unless he knew that the corporation was clothed with necessary franchise rights.

If the applicant is an hydro-electric plant, the Commission should require a copy of the certificate of water rights, granted to it by the State, and certified to by the proper officer of the Board of Irrigation. When the Commission has sufficient evidence before it as to the complete legal status of the applicant and is satisfied that the applicant has complied with all of the laws made and provided, affecting its organization and incorporation, and that it is clothed with franchise rights and all other rights necessary for it to exist and operate as a public utility, the applicant then is in a position to be heard in an application for the authority of the Commission to issue securities.

The next duty imposed upon the Commission comes under the heading hereinbefore set forth 3 d to 3 h inclu-

sive. The Commission cannot certify that a certain amount of securities is necessary, the proceeds of which are to be invested in properties devoted to a public service, without first having a complete history of the financial affairs of the corporation. There are four definite purposes enumerated in the statute for which this Commission can grant its authority to issue securities, namely, (1). The acquisition of property. What kind of property? Farm properties, banking properties, or shoe manufacturing properties? Where is the line to be drawn? It seems to me, that a logical interpretation of the law would indicate that the proceeds of securities authorized by the Commission are to be invested in properties devoted to and necessary for a public service, and that the Commission must ascertain how much money is necessary for such purposes. (2). For the "construction, completion, extension or improvement of its facilities." Herein again the statute must mean, if it means anything, the construction, completion, extension or improvement of facilities devoted to and necessary for the public service. (3). For the "improvement or maintenance of its service" certainly must mean the improvement or maintenance of its corporate public service. (4). For the "discharge or lawful refunding of its obligations". Herein again it must mean, the discharge or lawful refunding of obligations, the proceeds of which were invested in one or more of the first enumerated purposes.

The Commission cannot certify that a certain amount of securities, the proceeds of which are to be invested in one or more of the purposes enumerated in the statute, is necessary without a comprehensive knowledge of all the purposes for which the securities are to be issued.

When these matters are all properly before the Commission in complete detail, the Commission will begin to have adequate information upon which it can determine the amount of securities that should be authorized.

It seems to me that the above enumerated requirements are reasonable and, if accepted and enforced by the Commission, would harm no one, but would be beneficial to the

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public and even to the utilities in their far-reaching effects. Yet there is no specific legislation to guide the Commission in these matters and the Commission is compelled to establish its own rules and precedents which will enable it to carry out the spirit and intent of the law.

But suppose the above rules were adopted and enforced by the Commission and the Commission should stop there, it would fall far short of its whole duty. There are further studies to be made which are indispensable if the investor and the public are to be fully protected. We all know that every community is constantly besieged by promoters representing manufacturers of utility equipment of every conceivable nature. He is not so much concerned at the character and quality of the equipment or as to the economic conditions of the plant when it is once installed, as he is in selling equipment. Would it not be necessary for the Commission to see to it that the plant to be built is not only an economic one in itself, but that it is of a proper size and capacity to serve the particular community for which it is intended? Would the Commission be protecting investors in securities or the rate-paying public if it authorized securities, the proceeds of which were to be used in the building and equipping of a \$20,000 plant in a community that could be well and amply served by a \$10,000 plant. I think not.

If, however, should the applicant in its application for authority of the Commission to issue securities, file its articles of incorporation, franchise rights and all other papers which determine the legal status of the company and full plans and specifications and detailed inventories of the material to be used in the plant to be built, and the Commission should determine that the company was legally incorporated, that it is clothed with proper franchise rights and that the plant will be economic and efficient (by "economic and efficient" I mean such a plant that will deliver the best service at the lowest possible rate, having due regard always to an operating income sufficient for all operating expenses and a fair return upon the investment),

and that the plant will require an investment of \$10,000, should the Commission approve an issue for that amount without any further limitations? I think not. Remember that stock watering may be accomplished indirectly just as effectively as directly. Suppose a company should pay out of surplus, over and above the ordinary operating expenses, excessive dividends and set nothing aside for depreciation, would not the facilities soon become much less in value than the outstanding securities, which would be ultimately reflected in the quality of the service it sold. It necessarily follows that the Commission, if it is to protect the investor and the public, should in its order of approval provide that a certain per cent. on the investment should be annually set aside for maintenance and depreciation out of the operating income before any dividends are paid. There should be no difference of opinion in this, because on every hand we see the direful results of the neglect on the part of utilities to provide for sufficient reserve funds for maintenance and depreciation. Here again the statute is silent and it is left to the Commission in its broad powers to take care of just such matters.

Another question of great importance under the act is the proportional amount of bonds to the stock that the Commission should authorize to be issued. Following the New York Commissions, I am of the opinion that the amount of the bonds issued should be limited to an amount on which the net surplus will with certainty pay the fixed charges, remembering that the bonded indebtedness of the utility is for a definite amount of money at a definite rate of interest for a definite period of time, the holders of which have no say in the management or control of the business affairs of the company. Therefore a stricter rule should be drawn as to the amount of bonds to be issued as compared to the amount of stock. The Commission must then necessarily pass upon the rate of interest the bonds are to bear. Again the statute is silent, and the Commission must get its power from a broad and liberal construction of the statute.

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Suppose an applicant has built and equipped a \$10,000 plant under the direction and approval of the Commission as above outlined, and that it is serving all customers without discrimination and the rates charged are those made by the Commission and, owing to some factional strife in the community or because some are dissatisfied with the rates made by the Commission, another company should incorporate and come to the Commission, complying with all of the requirements of the Commission and asked for authority of the Commission to issue \$10,000 in securities, the proceeds of which are to be used in the installation and equipping of another plant just like the one already in operation (in the first instance the Commission has restricted the company to a \$10,000 plant because the community to be served would not require nor would it support a larger one at reasonable rates), should the Commission place the stamp and seal of approval upon the second issue, knowing that it meant duplication of facilities, depreciation in property and a decided loss to one or both sets of investors? It also would mean a depreciation in service, and a decided rise in rates to the community as a whole. It means that each telephone user (if the utilities are telephone plants) will be compelled to take two 'phones, or as many 'phones as there are companies serving, if he is to be able to reach all telephone subscribers in that community.

Remember that when the State reaches out the hand of restriction and lays it on any business, it must also at the same time extend the one of protection. This must be true if investors are to be protected and equity is to be done to those who are served and those who serve.

The Lincoln Telephone and Telegraph Company, owning and operating telephone property in Lincoln and many other towns and cities in southeastern Nebraska, having a strong competitor in the Nebraska Telephone Company and many local independent companies, after years of bitter warfare, purchased all the Nebraska Telephone properties in that portion of the State south of the Platte river and east of a line drawn north and south at Hastings.

It also purchased many of the local exchanges and toll lines of the independent companies in that part of the State. It came to the Commission for the approval of securities, the proceeds of which were to be used for such purposes. It also asked the approval of the Commission to make a consolidation of all competing exchanges, representing that such consolidation would result in better and more economic service and a saving generally to the public. The Commission approved the securities so applied for until the total amount of outstanding liabilities of said company amounted to over \$6,000,000. The Commission also approved the merger and consolidation of the competing companies.

The "exercises of such authority" did not "involve too great a responsibility and its effects" were not "too far-reaching to prevent the Commission from exercising it without being specifically directed so to do by the legislature." And yet, the majority of the Commission in its opinion herein says, in principle, that should another company incorporate and apply to the Commission for authority to issue securities, the proceeds of which are to be used in building and equipping a duplicate and competing plant in the city of Lincoln, it would be compelled to grant its authority, and that a proceeding in mandamus would prevail against the Commission should it withhold its approval.

If the capitalization of plant facilities as approved by the Commission for the Lincoln Telephone and Telegraph Company, in what is known as the Lincoln zone, is right, and if the rates as made by the Commission are necessary to produce an operating income sufficient to pay all operating expenses, maintenance, depreciation, taxes, losses and damages, and then a surplus sufficient only to pay a reasonable return upon the valuation as fixed by the Commission, and if the Lincoln Telephone and Telegraph Company is serving all applicants without discrimination and is obeying all of the rules and orders established by the Commission in such matters, the capitalization of another company could be productive of no good, neither to the

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service nor the rate-paying public, and the result would be a new strife and a community warfare, resulting in depreciation in service, great financial loss to one or both of the companies occupying the territory, or a decided rise in the rates that are now being paid. I am of the opinion that one of the purposes which called the Commission into being was to prevent just such things from being done.

There were two exchanges at Sterling, Nebraska, both of which the Lincoln Telephone and Telegraph Company purchased and applied to the Commission for authority to consolidate them. The Commission not only approved of the purchase and consolidation but, after a hearing, made rates for all users that are *prima facie* equitable and must stand until set aside by this Commission or the Supreme Court.

The rates made by the Commission are, however, considered to be too high by many of the telephone users and, for this reason, a new company, the applicant herein, has been incorporated and has applied to the Commission for authority to issue securities, the proceeds of which are to be used in building telephone facilities in the same territory now served by the two consolidated old companies. Surely this cannot be curative of the evil. If the rates are too high, the Commission should reduce them. If the Commission does not do its duty, its action upon appeal should be reviewed by the Supreme Court.

Does the majority of the Commission admit that new companies may spring up whenever and wherever they will, because a part or all of the patrons believe the rates made by the Commission are too high? Will not the Commission have to make rates for both companies to raise a sufficient amount of operating income, sufficient to pay all operating expenses of both properties and a fair return upon the entire capitalization authorized and approved by this Commission? If not, the properties will go to wreck and ruin, all of which will be ultimately reflected in the service.

As in the Lincoln case above referred to, when the Commission permitted the merger of the competing concerns

at Sterling into a consolidated utility which now serves that community, it was upon the representations that the merger would put an end to expensive warfare, prevent useless duplication in plant facilities and enable the consolidated concern to give good service at a fair rate. The Commission was persuaded and it permitted the consolidation and made rates for all classes of telephone service. Yet the present proposition is to put in a new competing company at Sterling, not because there is territory to be served that is not now being served, but because the telephone users think the Commission-made rates are too high, and subject the telephone users at that place once more to the destructive consequences of competition, with the certain result of increased expenses to the public or heavy loss to the investors. It is one thing to permit a natural or artificial person to engage in the business of a carrier or in any other project upon his own capital—it is another thing to arm him to destroy the holdings of investors who have bought stock theretofore approved by the Commission in a utility at a stated point, by approving stock for him to sell to other investors for a competing utility at that point.

I have read the majority opinion with unusual care and with a sincere desire to concur, if possible, in the conclusions reached, but it seems to me that if, as the opinion states, the service and rates of the established utility are all that they should be, the Commission is under a duty to withhold its approval of the securities applied for. Naturally this cannot be done by the Commission unless it is vested with power to do it—unless it has authority of law to deny the application. I am convinced that our Constitution and legislative acts have both conferred the power and imposed the duty upon us. Confident in this, I am constrained to defer from the majority of the Commission and to be of the opinion that the application should be denied.

The other members of the Commission are as strongly of the opinion as I am that another company at Sterling will be an economic waste, a great pity and all together de-

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plorable. In fact it is not too much to say by unmistakable inference from the opinion that they would be glad of a pronouncement of power—an act of the legislature—which would prevent the dangerous and undesirable circumstances and all repetitions of it. They are reluctant to act, they fear to assume the responsibility, they are unwilling to protect the public and the investor because they find no specific license in the statute to refuse the company which knocks at their door. Clearly their decision rests upon this basis. The opinion turns upon this point as is evident from the citation from the Application No. 1651,* *Omaha, Lincoln and Beatrice* case, and from the argument of Commissioner Clarke in connection therewith:

“While the Commission, under the constitutional amendment creating it, might in the absence of specific legislative action restricting it, and in the exercises of its authority in the approving of stock and bond issues withhold its approval of such issues of a proposed competing public utility, on the ground that the public convenience did not require the construction of such utility;

Held, that the exercise of such authority involves such grave responsibility and is so far-reaching in its effects that the Commission will not exercise it unless specifically directed so to do by the legislature.”

As stated hereinbefore I am unable to assent to this definition of the function of the Commission. To refuse to accept responsibility when the danger is obvious and the need is great, it seems to me to be recreant to trust and unmindful of duty. To what end did the people of the State in their amendment to the Constitution vest the Commission with the power and duty to regulate and to control? Plainly to no purpose, if not to protect the public when it needs to be protected. “*But in the absence of legislation,*” says the Constitution, “*the Commission shall exercise the powers and perform the duties enumerated in this provision*” (*i. e.*, by reference to the enumeration in the two lines immediately preceding) “*the regulation of rates and general control of common carriers.*” There has been no

*Sec Commission Leaflet No. 16, p. 619.

specific legislation upon its power, as the majority opinion admits. How, then, can it justify itself in its refusal to prevent a thing that is by all experience uneconomic, destructive and wrong? Not only does it so refuse in the decision reached, but it does what is far more reprehensible. *It places its stamp and seal of approval upon the stock of the new company.*

Nor has the Commission bound itself to the doctrine of the *Omaha, Lincoln and Beatrice* case.* As it has grown in usefulness to the State, it has taken the Constitution at its word, accepted its power, obeyed its mandate and assumed more and more responsibility. As a matter of fact, the purpose of the people in their constitutional amendment is plain. They did not distrust the legislature. On the contrary, they gave it express authority to limit the Commission, but their intention was, and they put it in plain words, that in case the legislature refused or failed to direct or restrict, the Commission should proceed with plenitude of power, hearing fully, investigating thoroughly, deciding wisely and acting fearlessly in the regulation and control of all carriers. Honest duty went with broad power to the end that while the utilities should be safe-guarded in their rights, the public should be served and not injured. The rule of the Commission should be not to draw back from grave responsibilities and far-reaching effects, but to go forward with the power and equipment which the State has provided for the work given it to do, and so discharge the duties of its being. Otherwise with its reports and its statistics, its records and its studies, its engineers and its accountants, it has failed in its function and is become as sounding brass or a tinkling cymbal. Its proper function is to proceed with the business in which the State has made it at once the investigator and the judge, furnishing it with expert aid that it might act with unusual wisdom and more than ordinary dispatch. I earnestly insist its practice should be the opposite of that so gravely approved in the majority opinion. Instead of awaiting timidly the direc-

* See Commission Leaflet No. 16, p. 619.

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tion of the legislature, it should, since its power is plain, accept responsibility and courageously meet and decide the questions referred to it, until the legislature calls a halt.

As I have intimated, this doctrine of negation was formerly more common in the Commission than now. Once the clerks and Commissioners, overlooking the Constitution, searched the statute for specific legislative authority to deal with the commonest questions of capitalization and control and, finding no warrant therein, disclaimed jurisdiction. Shortly after the passage of the Stock and Bonds Act, the public service corporations, which came to get leave to issue their stock, were heard without questioning, and none were turned away empty.

This doctrine of negation has led to a common practice of the legislature taking up the most common questions of service and passing many specific acts and directing the Commission to enforce the same. In 1909, the legislature passed acts requiring the railroads to place telephones in their public offices, closets and smoking rooms on motor cars, and an act to enforce the proper manning of trains. In 1911, acts were passed providing for the guarding of freight that is to be shipped, the building of stock sheds in stockyards, and to furnish cabooses of proper dimensions, equipment and facilities for the stock shippers, the passage of the way car act, an act placing track scales under the inspection, control and supervision of the Commission, an act regulating the weighing of cars and freight, and many other acts which pertain strictly to questions of service, all of which should, under the Constitution, be taken care of by the Commission. I realize forcibly that many legislators, knowing that the proper forum for such matters is that of the Commission, anxious to make a record for themselves, prepare such bills, introduce them and have them passed by the legislature.

But in later years, the Commission has learned more of its duty and has required applicants to show cause before permitting them to issue their securities and sell them broadcast upon the faith and credit of the State's approval. For instance, in the early practice of the Commission, since

neither the Stock and Bonds Law nor the Constitution specifically directed it, the Commissioners scarcely asked a question about the legal status of the corporation, its franchise rights and the properties of the concerns which sought to issue stock and bonds and have the Commission's approval thereof. Now it regularly demands full statements and complete information of these things, on the theory that the law, though specifically silent on the point, gives implied power to the Commission to require the same and implied direction so to do. Once a public service corporation was permitted to operate without providing a fund for maintenance and depreciation. Now a realization of its duty to protect the public and to guard against overcapitalization by this means, constrains the Commission to require the public service concern to set aside a certain per cent. annually out of its operating income as a maintenance and depreciation reserve fund, that the Commission may know that the properties devoted to a public service will be kept intact and approximately equal to the outstanding liabilities authorized to be issued by the Commission. No specific warrant, as I have hereinbefore said, appears for this in the letter of the law, but the Commission, without dissent, finds authority for it in the broad provisions of the Constitution and in the proposed intendment and implied powers of the legislative act. The Constitution which creates the body is self-executing. It confers power without limit in the absence of legislative restriction and imposes the coincident duty of regulation and control.

The majority say in their opinion* herein that,

"In recent sessions of the legislature, subsequent to the enactment of the statute in question, bills requiring public service utilities to secure a certificate of public necessity and convenience before commencing operations or making extensions, have been introduced, but failed of passage."

And further,

"The Commission is fully cognizant of the evils involved in duplication of service in public utilities. The greater possibilities of financial loss on

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the part of the investors involves a greater risk which must be considered by the Commission in determining a reasonable rate of return. As the law now stands, the power to correct this condition lies with the legislature and not the Commission."

Does not the Constitution say that, in the absence of specific legislation the Commission shall exercise the powers and perform the duties enumerated in this provision (*i. e.*, by reference to the enumeration of powers therein contained, "*the regulation of rates, service and general control.*") Is there any legislation that the legislature could enact affecting *rates, service or general control*, that would be constitutional, that the Commission could not incorporate in its general orders and enforce the same, in the absence of specific legislation? Suppose that without question it could be conclusively shown that an order, promulgated and enforced by the Commission, to the effect that "No person, firm, partnership, association or corporation shall begin to construct, or construct or put in operation, any plant, system, or equipment, for the purpose of engaging in business as a common carrier in the State of Nebraska without first making complete showings to the Commission as to what it proposes to do," would result in more efficient service and a saving generally to the rate-paying public, would it not be in line and consistent with the Constitution? After promoters have sold inefficient machinery and installed uneconomic plants, and sold them to the citizens in their respective communities, it is too late to correct the evil. If the Commission is to place the stamp and seal of approval upon securities, the proceeds of which are to pay for utility plants, it should, and must necessarily, have jurisdiction of the matter from its conception. If time and space permitted, I would enlarge upon this phase of the question.

In no respect is this power any less than that vested in the New York Commissions which, however, are not constitutional bodies, but are generally authorized by the statute of public necessity and convenience to grant or with-

hold approval for the building and installation of utility properties. Our law does not extend like legislative authority, but its lack in this particular is more than supplied by the constitutional provision. Nothing broader nor more all-inclusive than the latter could possibly be framed except, perhaps, a provision in similar language but containing in addition a statement that the legislature could not prescribe any rule different in the premises. This conclusion, I take it, will not be denied by the majority, since it is the trend of the opinion that the Commission has the power by the Constitution, though not justified in using it in the present instance. This being a fact, it is instructive to note that the New York Commissions consistently refuse their sanction to a new competing company which desires to enter a field already occupied by a well served public utility.

It should be conceded that our Commission would not permit the issue of securities to build a \$20,000 plant in a \$10,000 population town, or that it would withhold its authority to issue securities for a utility that was not legally incorporated, or that was not clothed with proper franchise rights, or that it did not have an amount of property to warrant the amount of securities applied for. Why? Take the first instance and the answer is because a plant of that size would be too big for the community which it is to serve. It would oppress the public and bankrupt itself. It could not exist. It would be doomed to certain failure. When we get down to fundamentals the ultimate answer is the same in both cases. The Commission should refuse to start these projects, because they would have no chance of success. The success of the corporation is a purpose of the public service concern—none can deny this. It is necessary to the maintenance of its service, hence, in denying this concern the privilege of issuing stock, the Commission is within the letter of the section as well as backed by the sense of the situation. It should refuse because, not having a chance of success, the issues which they ask for would not be “reasonably required for the said purpose of the corporation.”

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The matter of being able to make the project go becomes a factor of controlling force. The Commission of this State, like those of other states, should not authorize the project without it has a reasonable show to make good.

In *Refunding Bond Issue by the Dry Dock, East Broadway and Battery Railroad Company*. Reports of Decisions of the Public Service Commission, First Dist. N. Y., Vol. 5, No. 3, Page 141, the New York Commission said in its syllabus:

"Bonds should not be issued in excess of the amount upon which the property will regularly and with reasonable certainty earn interest, after paying all operating charges, including depreciation, etc., and amortization."

And again:

"The issuance of bonds cannot be certified as "*necessary*" for specific purposes, as required by Public Service Commissions Law, Section 53, if the inevitable or probable result would be the insolvency of the corporation issuing them."

Now what is the inevitable or probable result of this new Sterling project? It is the belief of this Commission, as appears clearly in the majority opinion, that it cannot fairly look for success and, in fact, that it is destined to failure. It purposes going into Sterling and battling with the established company there for the telephone business. If it achieves success, it must do it over the ruin of its rival, for competition in public service is war to the death. Competition practically bankrupted both companies there a few years ago and history stands ready to repeat itself. The new concern has no opportunity to succeed, because it is going into the fight in its infancy against an older, stronger and more experienced opponent. The Commission should refuse it recognition if the probability was that it would become insolvent because of defective incorporation, lack of franchise, lack of property or lack of approved methods of conducting its business. Why not also refuse, since the matter of failure is at the bottom of all this, when failure

is imminent on account of destructive competition? In my mind there is no escape from the logic of the situation.

I quote again from the *Dry Dock, East Broadway and Battery Railroad Company* case, *supra*:

"If counsel be right, the Commission may not refuse to permit an issue of bonds even though it has positive evidence that interest and fixed charges will not be earned and even though it is certain that there will be default in the payment of interest, foreclosure proceedings and a sale of the property to pay the bondholders even within a year from the time when the Commission, acting for the State of New York, has authorized the bonds to be issued. If counsel be correct, the Commission could not then refuse to allow securities to be issued to pay the principal of such bonds and the unpaid interest, for principal and interest would be obligations against the company and the company would have the right to refund them regardless of the value of the property or the earning power of the company. Such a theory is absurd and reduces the Commission to a rubber stamp to be used at the convenience of the directors of a corporation. The Commission would become ridiculous if it did not consider probable earning capacity and would authorize bonds to be issued upon which interest could not be paid.

"No issue of bonds can be said to be 'necessary' in any sense of the word if the inevitable or probable result would be the insolvency of the corporation issuing the securities."

Instructive excerpts might be added from the opinion in the *Delaware and Hudson Company* case, *supra*, notably the language of Commissioner Stevens, page 431, in which he says that:

"The first inquiry should be as to the natural and probable result to be anticipated from the decision made, both to the corporation and to the public."

And from the opinion of Commissioner Decker, in the *Niagara Light, Heat and Power Company*, Public Service Commission Reports, 2nd Dist., Vol. 2, page 112, in which he says, that:

"Over capitalization, which has become an accomplished fact upon which rights are based, which has been tolerated if not recognized by law is one thing: overcapitalization by authority and approval of the Commission is another."

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In conclusion I wish to observe that in *Bulkeley et al. v. New York, New Haven and Hartford Railroad Company et al.*, 216 Mass. 432, 436, and in *Fall River Gas Works Company v. Board of Gas and Electric Light Commissioners*, 214 Mass. 529, the Supreme Court held that an act similar to ours vested the Commission with discretionary power, but this would seem obvious in our act from the very fact that the act of 1909 provides for a hearing by the Commission and by necessary implication vests it with discretion.

I am satisfied that the Commission has ample power to deny the application both from the statute and from the Constitution. I am convinced that opportunity to serve the people of Sterling by this new company does not exist, that the company has no chance of success, and every earmark of expensive and destructive mischief, however well meaning its friends and promoters.

In my opinion, to grant the application will prove an injustice to the company and to the community, and I think it ought to be denied.

Dated at Lincoln, Nebraska, this first day of July, 1915.

IN THE MATTER OF THE APPLICATION OF THE FARMERS' AND MERCHANTS' TELEPHONE COMPANY OF ALMA FOR AUTHORITY TO PUBLISH AN INSTALLATION RATE OF \$2.00.

Application No. 2437.

Decided June 17, 1915.

Installation Charge Authorized.

ORDER.

WHEREAS, the Farmers and Merchants Telephone Company of Alma has made application to the Nebraska State Railway Commission for authority to publish a rate of \$2.00 for the installation of each telephone hereafter to be connected with its line, the amount so paid to be credited

to patron if 'phone is kept in the same location for one year or more;

And it appearing to the Commission upon due investigation and consideration that the application is reasonable and warranted by existing conditions;

It is ordered by the Nebraska State Railway Commission,
That the desired authority be and the same is hereby granted, said installation rate to become effective from and after July 1, 1915.

Made and entered at Lincoln, Nebraska, this seventeenth day of June, 1915.

NEW YORK.

Public Service Commission — Second District.

**IN THE MATTER OF THE COMPLAINT OF FREDERICK C. WEBER
OF THE HAMLET OF WALES CENTRE, ERIE COUNTY, FOR
HIMSELF AND OTHERS, *v.* FEDERAL TELEPHONE AND TELE-
GRAPH COMPANY AND THE ERIE-WYOMING TELEPHONE
COMPANY, AS TO RATES AND SERVICE.**

Case No. 4826.

Decided June 28, 1915.

**Subscriber at Boundary Line between Services of Two Companies Not
Entitled to Service of Both for One Subscription or for One
Subscription Plus a Small Additional Fee.**

Complaint was made by a subscriber of the Federal Telephone and Telegraph Company who lived near the boundary line between the services of the two respondent companies, that service over the lines of both companies was not accorded for one subscription or for one subscription plus a small additional charge.

Complainant was receiving multi-party line service from the Federal company. The line of the Erie-Wyoming company was connected for toll service with the line of the Federal company at or near the complainant's residence. On all messages to subscribers of the Erie-Wyoming company, the complainant was obliged to pay toll. Service of the Erie-Wyoming company had been offered to the complainant at the same rate that he was paying the Federal company, but he had declined to avail himself of this offer.

Held: That no fault can properly be found with the practice of either company.

OPINION AND ORDER.

This case comes to the Commission upon the complaint of Frederick C. Weber, who lives at Wales Centre, Erie County, and complains of the rates and service of the two telephone companies, the respondents in this case, which are furnishing rural service in the towns of East Aurora, Chaffee and Wales.

This case presents the usual situation where the subscriber, living near a boundary line between the two tele-

phone services, makes complaint that service is not accorded over both lines for one subscription, or for a very small additional charge. The complainant pays the Federal company \$12.00 per year for service on a multi-party line; he has no instrument of the Erie-Wyoming Telephone Company, but that company's line is connected with the Federal company's line for toll service at or near his premises.

Any toll service, therefore, even to the complainant's nearest neighbor, who lives along the Erie-Wyoming line must be paid for by the complainant at such reasonable rates as the latter company may charge and this seems unreasonable to complainant in the light of the fact that he has extensive service without toll charges on his own line for several miles. These facts were brought out clearly at a hearing held by the Commission in this case in the city of Buffalo on the thirtieth day of April, 1915, at which hearing the complainant appeared in person, and the Federal Telephone and Telegraph Company was represented by *Mr. Thomas R. Wheeler*, of the firm of *Kenefick, Cooke, Mitchell and Bass*, of Buffalo, attorney, and by *Mr. J. G. Ihmsen* and *Mr. H. M. Dixon*, as officers of said company; *Mr. H. A. Odell*, the president of the Erie-Wyoming Telephone Company, also appeared.

Upon the foregoing facts it cannot be said that any fault can be properly found with the practices of either of the respondents in this case, although some of the toll charges exacted by the respondents might be slightly reduced; but no proof was introduced by the complainant showing that such charges were unreasonable, and it appeared on said hearing that most of the telephoning which the complainant desired to do was with people on the line of the Erie-Wyoming Telephone Company, and he was offered service on that line at the same rate he was paying the Federal Telephone and Telegraph Company, but declined to avail himself of that privilege.

It is, therefore, ordered, That the complaint herein be, and the same hereby is, dismissed.

Dated June 28, 1915.

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IN THE MATTER OF THE COMPLAINT OF FRANK M. BRADLEY OF BARKER, INDIVIDUALLY AND AS REPRESENTING THE WEST SOMERSET COLD STORAGE COMPANY AGAINST NEW YORK TELEPHONE COMPANY, AS TO RATES AND SERVICE AT THE EXCHANGE IN BARKER, NIAGARA COUNTY.

Case No. 4147.

Decided July 15, 1915.

**Four-Party Line Service Established and Rates Therefor Fixed—
Reasonableness of Excess Mileage Charge Not Determined,
Although Company's Charge Permitted to go Into Effect.**

OPINION AND ORDER.

The original complaint herein was filed with the Commission in February, 1914, the same was answered by respondent on March, 1914; on the twenty-seventh day of November, 1914, a supplemental petition was filed herein, and on the thirtieth day of December, 1914, the answer of the respondent to said supplemental petition was duly filed with the Commission. Both the original and supplemental petitions set forth that an exchange of the respondent is located at Barker and serves the said village besides considerable surrounding territory, including several hamlets and villages, and that the petitioner, Frank M. Bradley, is a subscriber of the respondent upon its rural multi-party line, so-called, as is also the said West Somerset Cold Storage Company, and that there are eleven subscribers on the said party line used by said petitioner. The allegation is made that from the said Barker exchange the respondent serves upwards of 334 subscribers; that such multi-party line is overcrowded so that the service thereon is inadequate and improper and the Commission is asked to establish a four-party line service at such reasonable rates as may be determined.

The respondent, by its answers, admits such multi-party service but alleges that such service is adequate, reasonable and proper, and that the respondent has offered to furnish the petitioners a higher grade service at the regular scheduled rates as filed with this Commission but that

the petitioners have refused to accept the same; other allegations are contained in said petitions and answers relative to single individual line service, but it will not be necessary to deal with the same in this order because it is intended to establish a four-party line service at said Barker exchange.

Several hearings have been held in this case by the Commission, which were attended by the complainants, with *Mr. David Tice* of Lockport, N. Y., their attorney, and *Mr. H. R. Gabay* and *Mr. George R. Grant* of No. 15 Dey Street, New York City, appeared for the respondent, and at the hearings considerable proof has been taken with reference to the allegations contained in said petitions touching the inadequacy of the multi-party line service which is furnished by the respondent to the petitioners and others in said territory; several conferences have been held between the parties to this controversy and Commissioner Hodson, who conducted said hearings, looking to a settlement of this case, to the end that satisfactory service at proper rates may be installed for the territory in question; and at one of said hearings the respondent, among other things, offered to install a four-party line telephone service at said Barker station, for the benefit of all the territory now served by said station at and for the rate of \$21.00 for business service and \$15.00 for residence service, together with reasonable and proper mileage charges which were proposed by the respondent at \$2.00 per one-quarter mile beyond the base rate area of said station.

Such proposition so made by the respondent with reference to the installation of said four-party line telephone service was immediately submitted to said petitioners and to all others at said hearings, who desired an improved service from the multi-party line service which they now have; many of such subscribers do an extensive business in shipping fruit during certain portions of the year, and said Barker station is located in the midst of the fruit producing territory of Niagara County, and it is very necessary that such shippers have a convenient and adequate telephone

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service in order to promptly communicate with the various markets of the country, and also with the railroads which transport such fruit to the market; all of said persons announced their willingness to accept such four-party line service and the base rate charge for the same, believing the same would be adequate and satisfactory, but all of them likewise objected to the proposed mileage charge of \$2.00 for each one-quarter mile as above stated, and the petitioners proceeded with their case and closed their proof on the twenty-first day of May, 1915.

Thus it appears that the parties are agreed as to the improved telephone service which should be given by the respondent to its subscribers served from the Barker exchange, and as to the base rate charge for residents and business telephones, but the only question remaining undecided is the matter of mileage charges for such service, which the respondent claims is state-wide in its nature, and the examination of such question and the necessary proof which must be taken by the Commission would probably involve more than a year's time, during which period the subscribers, who are ready to take such service, would be deprived of the same unless such service is installed before the determination of the question as to what is a just and reasonable mileage charge for such service.

It is, therefore, ordered,

1. That the respondent, New York Telephone Company, be, and it hereby is, directed to establish on or before the first day of August, 1915, its four-party line telephone service at its exchange in the village of Barker, Niagara County, at and for the base rate charge of \$21.00 for a telephone at a business place and \$15.00 for a residence telephone, together with a mileage charge of not more than \$2.00 for each one-quarter mile beyond the base rate area of said Barker exchange; and at such time the said respondent shall furnish adequate and proper accommodations for all persons within the territory served by said Barker exchange, to become subscribers for and users of said four-party line telephone service.

2. Nothing herein contained shall in any wise be construed as a determination by the Commission of fixing or approving of said mileage charge of \$2.00 for each one-quarter mile beyond the base rate area of said Barker exchange; but the question with reference to the just and reasonable mileage charge connected with said four-party line telephone service within the territory now served by the said Barker exchange shall be considered open and undecided, and may be inquired into and determined by the Commission in any proceeding hereafter brought by any interested party or in any inquiry or investigation made by the Commission of its own motion; but the said mileage rates mentioned in the first subdivision of this order may be charged and received by the respondent until the further order of this Commission.

3. Said respondent, New York Telephone Company, is hereby directed, pursuant to the terms of Section 23 of the Public Service Commissions Law, to notify this Commission on or before the twentieth day of July, 1915, whether the terms of this order are accepted by it and will be obeyed; and if accepted and obeyed, the said four-party line telephone service shall be established under proper tariff authority, and special permission of the Commission for the establishment thereof on less than statutory notice is hereby granted; such tariff authority to contain the following notations:

"Established on three days' notice to the public and the Commission under order of the Public Service Commission, Second District, State of New York, dated July 15, 1915, in case No. 4147."

Dated July 15, 1915.

PENNSYLVANIA.

The Public Service Commission.

**IN THE MATTER OF THE PROCEDURE TO BE FOLLOWED UNDER
GENERAL ORDER No. 11.**

Administrative Ruling No. 8.

Dated July 8, 1915.

**Procedure to be Followed under General Order No. 11 where the Facilities
of one Public Service Company Cross Those of Another.**

ADMINISTRATIVE RULING.

WHEREAS, some doubt has arisen as to the proper procedure to be followed under General Order No. 11* of this Commission, it is hereby declared and determined:

(1) Where the public service companies have entered into an agreement, providing for and prescribing the particular point or points of crossing and also the way and manner of the construction thereof, no notice is required to be served upon the company whose facilities are crossed, but notice of the proposed crossing must first be given in writing to the Commission, together with a certified copy of the agreement, and immediately after the crossing or crossings have been constructed, a certificate, duly verified, setting forth that the same have been constructed in accordance with the terms of the agreement, shall also be filed with the Commission;

(2) Where the public service companies have executed general agreements, which do not specify the particular point or points of crossing, but provide for the way and manner of the construction of all crossings, notices as required by General Order No. 11* must be served upon the

* Sec Commission Leaflet No. 34, p. 1104.

company whose facilities are crossed and copy of said notices, with proof of service thereof, filed with the Commission, together with certified copy of the general agreement, unless same has been heretofore filed;

(3) Where no agreement exists between the public service companies, with respect to crossings, notices must be served and filed as required by General Order No. 11.*

July 8, 1915.

*See Commission Leaflet No. 34, p. 1104.

SOUTH CAROLINA.

The Railroad Commission.

**WILLIAM A. MOORHEAD v. SOUTHERN BELL TELEPHONE AND
TELEGRAPH COMPANY.**

Decided June 30, 1915.

**Commission without Authority to Order Duplication of "Free Service
Line" between Exchanges — Period of Communication over
"Free Service Line" Limited.**

INFORMAL RULING.

The Commission has carefully considered your complaint* in regard to free service granted by Southern Bell Telephone company between Clinton and Laurens, and feels that they are not authorized to order free service under any circumstances, and especially to have erected a duplicate line to double the free service, as requested by yourself. The Commission, however, is willing to limit to five minutes the time for each call over the "free service line" and trusts that this will be satisfactory and when put into operation will give you the full benefit of free service. The Commission is unable to take any further action in the matter.†

* Complaint alleged that service over the "free service line" between Clinton and Laurens, was inadequate and sought the establishment of an additional "free service line" between the points named. Besides the "free service line", several toll lines extended from Clinton to Laurens over which communication could be had at a small toll charge.

† Letter of G. McD. Hampton, Chairman of The Railroad Commission, to William A. Moorhead, dated June 30, 1915.

WISCONSIN.

Railroad Commission.

IN THE MATTER OF THE INVESTIGATION ON MOTION OF THE COMMISSION, OF THE QUALITY OF SERVICE FURNISHED BY THE KINGSTON TELEPHONE COMPANY AND FARMERS' LINES CONNECTED THEREWITH.

U-442.

Decided June 26, 1915.

Investigation of Service Made.

Investigation was made of the service furnished by the farmers' telephone lines connected with the Kingston exchange of the Grand River Telephone Company and of the exchange service of said company at Dalton.

Reconstruction by Exchange Company of Rural Lines Owned in Part by Subscribers Authorized When Subscribers Failed to Make Necessary Renewals — Rural Service Rate to Become Effective When Lines Are Thus Reconstructed.

The rural lines connected with the Kingston exchange of the Grand River Telephone Company were not controlled by any definite organization. The wire of these lines and some of the instruments and poles were owned by the Grand River company, but most of the poles and instruments were supplied by the subscribers. Lower rates had been charged those subscribers who supplied part of the equipment. Poor service had resulted from the failure of the subscribers to make proper renewals of poles and instruments.

Held: That if the Grand River Telephone Company, which supplies the rural service, finds it impracticable to continue the former arrangement because of the failure or refusal of subscribers to furnish renewals of equipment, it may reconstruct these lines at its own expense and charge all subscribers its regular rural service rate based upon the ownership of all equipment by the company.

Discontinuance of Service or Invasion of Territory Only Courses to be Followed Where Farmers Owning Rural Lines Refuse to Furnish Renewals.

At Pardeeville, the farmers furnished all the equipment on the rural lines and were supposed to make all renewals. An organization which had formerly governed these lines had fallen apart.

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Held: That unless some organization can be secured by which there will be a definite fixing of the responsibility for furnishing renewals, adequate service will be impossible, and as no authority can compel these individual farmers to furnish their share of renewals, the farmers must either go without service or some outside company must be permitted to develop the territory and have the right to furnish service therein.

Installation and Maintenance of Switchboard Ordered — Construction of Additional Through Lines Ordered.

A small switchboard had been installed at Dalton, a village situate within the territory served by the rural lines connected with the Kingston switchboard. This switchboard, with its connecting lines, was part of the Grand River company's system and was connected with a through line from Kingston to Pardeeville. As about 100 calls per day passed over this through line, the parties connected with the Dalton switchboard were unable to receive adequate service over other portions of the Grand River system or over the lines of the Pardeeville Telephone Company with which they were entitled to free connection.

The Dalton Commercial Club desired that the exchange at Dalton be extended to take in all parties in the village who desired telephone service, and to include rural lines to reach farmers who were being served through either the Kingston or the Pardeeville exchanges.

Held: That the Grand River Telephone Company should install a new switchboard at Dalton and furnish service to all applicants;

That the Grand River Telephone Company should construct an additional through line from Kingston to Dalton and that the Grand River company and the Pardeeville Telephone Company should construct an additional through line from Dalton to Pardeeville, these lines to be used only for service between Kingston and Dalton and Dalton and Pardeeville respectively;

That the fact that there is a free interchange of service between the lines of the Grand River company and the Pardeeville company does not lessen the importance of having adequate facilities to handle this service, for as long as the companies undertake to furnish this free service, subscribers are entitled to receive service of a satisfactory grade;

That at present the Commission does not feel justified in ordering that some of the rural lines at present connected with the Kingston or Pardeeville exchanges should be changed so as to run directly into the Dalton exchange.

OPINION AND DECISION.

Investigation in this matter was ordered December 9, 1914, upon the representation of W. R. Sims and others that the owners of farmers' telephone lines connected to the Kingston exchange have allowed their lines to fall into

such a state of dilapidation that it is impossible for the Kingston Telephone Company to give reasonably good service to its subscribers. It was further represented that the responsibility for the maintenance of these rural lines was not definitely fixed, and that an investigation by the Commission should be made to determine what would be the best means of remedying the defects.

The Commission has also had under advisement an informal complaint on behalf of the Dalton Commercial Club, relating to exchange telephone service at Dalton, and the Dalton situation is included in the scope of this investigation. The Pardeeville Telephone Company, prior to the fixing of a date for hearing by the Commission, notified the Commission that it wished to be represented at the hearing in order that the telephone situation in and around Dalton so far as the Pardeeville company was concerned might also be investigated.

Hearing was held at Dalton, Wisconsin, May 4, 1915. The appearances were as follows: *Dr. G. O. Dunseth*, representing the Dalton Commercial Club, *H. A. Price* and *C. F. Schroeder*, representing the Grand River Telephone Company, *F. H. Smith*, representing the Pardeeville Telephone Company, *E. Dixon*, representing Line 33, and *W. R. Sims*, former president of the Kingston Telephone Company, which is now the Grand River Telephone Company.

The essential facts in the situation are as follows: The Grand River Telephone Company which has taken over the property of the Kingston Telephone exchange operates an exchange in the village of Kingston, and is interested in the operation of rural lines reaching out from Kingston in various directions, some of which extend beyond Dalton in the direction of Pardeeville and two of which are lines connected to both the Kingston switchboard and the Pardeeville switchboard. Kingston and Pardeeville are approximately fourteen miles apart.

The property of the Kingston Telephone exchange was sold to the Grand River Telephone Company on the tenth

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of March, 1915, but the Grand River company leased the Kingston exchange to Mr. Sims for operation until July 1, 1915. This was done according to the testimony, because the switchboard of the Kingston exchange has been established in the residence of Mr. Sims and the officials of the Grand River Telephone Company did not care to take over the operation of that company until a new central office could be established. The village of Dalton is a new village which has grown up within about three years on the line of the Northwestern road. The village of Kingston is an inland village which formerly obtained its railroad service at various other places. With the establishment of the village of Dalton, the farmers living within a radius of several miles of that place have found the railroad facilities at Dalton more convenient for their use than those at other points which they had formerly used. It appears that a very large amount of stock is shipped from Dalton, and that in many ways it is becoming a rather important center of a rich farming community. The village of Dalton lies within the territory supplied by the rural lines connected to the Kingston switchboard, but some time ago a small switchboard was installed at Dalton, which, at the time of the hearing, had a total of twelve telephones connected. This switchboard with its connecting lines and instruments is a part of the system of the Grand River Telephone Company, and is connected to a through line extending from Kingston to Pardeeville. The testimony indicated that there are approximately 100 calls per day passing over this line, which would seem to indicate that parties connected to the Dalton switchboard cannot receive adequate service over other portions of the Grand River company's system or over the Pardeeville Telephone Company's system with which they are entitled to free connection under the present operating agreement. The attitude of the Dalton Commercial Club as expressed by its representative at the time of the hearing is that the exchange at Dalton should be extended to take in all parties in the village who desire telephone service and to include rural lines

to reach farmers who are now served either through Kingston or through Pardeeville. The Pardeeville company has a few rural lines reaching within two or three miles of Dalton, on which there are subscribers who undoubtedly would find it more convenient to have their switching service done at Dalton than they do to have it done at Pardeeville. The lines of the Grand River Telephone Company extend from Kingston beyond Dalton, and there are undoubtedly a considerable number of rural subscribers on these lines who would find that the central at Dalton would best meet their convenience, provided that they could retain unlimited service with Kingston and Pardeeville.

Before considering the possible method of remedying the situation at Dalton, it will be well to present the facts with regard to the Grand River company's lines and the lines connected to the Pardeeville exchange.

The rural lines connected to the Grand River exchange at Kingston are not controlled by any definite organization unless the partial ownership of these lines by the Grand River Telephone Company may be construed as giving that company complete control over the lines. It appears that the wire on these lines is owned by the Grand River Telephone Company, as are also a number of the instruments installed, but that the poles were furnished by the individual subscribers who in most cases also furnished their instruments. At one point in the testimony, however, (page 9) it was indicated that not all subscribers on these lines had furnished their poles, but that in some instances the Kingston telephone exchange which then controlled the Kingston situation had furnished both poles and instruments. Switching service was performed for parties on these lines by the Kingston exchange, as was also the ordinary or current maintenance work connected with the upkeep of these lines. Renewals of poles and instruments were supposed to be made by parties receiving service, but renewals of wire, if there were any, were to be made by the Kingston exchange. The officers of the Grand River

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Telephone Company, which is the present owner of the system, seemed to have some question as to the right of the company to proceed to reconstruct these lines at its own expense and charge subscribers its regular rural rate. The testimony shows that practically all of the rural lines of the Grand River Telephone Company are in extremely poor condition, and that it has proved impracticable to have farmers receiving service from these lines furnish pole and instrument renewals, which would be necessary in order to enable the Kingston exchange to furnish adequate service. It seems to us that this situation is one which does not require much discussion. The Kingston exchange furnished the wire for these lines and in some cases furnished poles and instruments. In cases where subscribers furnished poles and instruments, the contracts which the company made with subscribers under agreements a great many of which ante-dated the passage of the public utility law, provided that a lower rate would be given to parties who furnished poles and instruments than to those for whom the Kingston exchange furnished all of the equipment. Such a procedure as this was declared illegal by the public utility law, although the purposes of such an agreement as far as they were reasonable could still be accomplished by charging all subscribers the same rate and paying a rental to those who furnished a portion of their equipment. It seems to us that there is no question, however, that it was the Kingston exchange, and not the individual farmers, who supplied telephone service in the rural community connected with Kingston, and that the present owner of the Kingston exchange, the Grand River Telephone Company, if it finds that it is impracticable to continue the former arrangement because of the failure or refusal of farmers to furnish renewals of equipment or for any other sufficient reason, may reconstruct these lines at its own expense and charge all subscribers the regular rate of the company for rural service, based upon the ownership of all equipment by the telephone company.

The Pardceville situation is somewhat different. There

the farmers furnished all equipment on rural lines and the Pardeeville Telephone Company, which operates local lines within the village of Pardeeville, furnishes switching service and does the maintenance work for these rural lines. All renewals are supposed to be furnished by the farmers supplied by these lines, but it is understood that the work of changing wires from old to new poles after such poles have been installed will be done by the Pardeeville Telephone Company. It seems that there was formerly some sort of organization among the farmers connected with the Pardeeville system, but no one at the hearing could give any definite information regarding the nature of this organization. The names of various of its officers who were elected a number of years ago were mentioned at the hearing, but it appears that for practical purposes the organization has been defunct for a number of years. The hopelessness of expecting to continue rural telephone service, where the service which can be furnished on any line must necessarily depend upon the condition of all parts of that line, unless there is some organization or individual to be held responsible for the upkeep of the entire line, is well illustrated by the Pardeeville situation. As the matter stands at present, unless all of the individuals on any line are willing to co-operate to keep up the line by furnishing their respective shares of necessary renewals, adequate service is impossible. There is no authority which can compel these individual farmers to furnish their share of renewals. The rural telephone business is a partnership of wide extent with no responsible officer or head whatever. To expect to secure adequate service on these rural lines under such conditions is, of course, ridiculous. Unless some organization can be secured by which there will be a definite fixing of the responsibility for furnishing renewals as they become necessary, adequate telephone service will be out of the question, and unless such an organization can be secured, it seems that farmers connected with these lines must either go without proper telephone service or that some outside company must be permitted to develop the

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territory and have the rights to furnish telephone service in it. It was suggested by the Commission's representative at the time of the hearing that an organization be formed by these farmers, and some correspondence has been had on the matter since then. It is hoped that an organization will be formed at an early date, and that steps will be taken to secure adequate telephone service. This is not a matter which requires a ruling in this case. It should be sufficient to set forth here the difficulties in the way of furnishing telephone service under the present arrangements and the necessity for forming a proper organization to control the situation if the telephone lines are to remain in the hands of the farmers in the community served. If the proper action is not taken, a further order dealing with this subject may be required.

The only matter involved in this case, therefore, upon which a definite order appears to be necessary, has to do with the situation at Dalton. It is understood that the Grand River company will remove its present switchboard at Dalton and install another, and that it will furnish service to all parties desiring it. It may be that the Dalton exchange will not be profitable for a number of years, but this will be largely due to the fact that rural lines which are naturally tributary to Dalton are now carried into Kingston or in some instances into Pardeeville. We do not believe that an order should be issued requiring these rural lines to be disconnected from Kingston and Pardeeville and carried to the Dalton central. If a new switchboard is installed at Dalton and service is furnished through that switchboard to all parties in the village of Dalton desiring such service, one portion of the problem will be solved. If, in addition, adequate connections are supplied between Dalton and Kingston and between Dalton and Pardeeville, it is believed that the farmers living in the vicinity of Dalton and business men and others in Dalton will receive a degree of telephone service which will for the present answer their needs. It may be that at some later time it will be found advisable to run some of the rural lines di-

rectly into the Dalton switchboard, but for the present we do not feel justified in ordering such a change. The fact that service between the lines of the Grand River company and those of the Pardeeville company is exchanged on a free service basis does not lessen the importance of having adequate facilities to handle this service. As long as the companies undertake to furnish this free service, subscribers are entitled to receive service of a satisfactory grade, and there seems to be no question that a single through line from Kingston to Pardeeville connected to the Dalton switchboard is inadequate to handle the service. It appears also that during wet weather it is almost impossible to secure any service over this line because of its poor condition. We believe that the only order necessary in this case is one requiring the Grand River Telephone Company to install and maintain a switchboard at Dalton and to furnish service to all parties at that place desiring it and requiring the Grand River Telephone Company to construct an additional through line from Kingston to Dalton and requiring the Grand River Telephone Company and the Pardeeville Telephone Company to install an additional through line from Dalton to Pardeeville. The matter of the division of the expense of the line from Dalton to Pardeeville need not be taken up in this case. In case the companies concerned cannot agree, the Commission will determine the proper division of the cost.

It is, therefore, ordered,

1. That the Grand River Telephone Company install and maintain in Dalton a switchboard and telephone system of adequate capacity to furnish service to all parties at that point desiring such service, and shall furnish service to all such parties.

2. That the Grand River Telephone Company install one additional through line from its switchboard at Kingston to its switchboard at Dalton, this line to be used only for service between Kingston and Dalton.

3. That the Grand River Telephone Company and the Pardeeville Telephone Company install one additional

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through line from the switchboard at Dalton to the switchboard at Pardeeville, and that this through line shall be used only for service between Dalton and Pardeeville. Sixty days from the date of this order is deemed a reasonable time for the completion of the work outlined herein.

Dated at Madison, Wisconsin, this twenty-sixth day of June, 1915.

COMMON COUNCIL OF THE CITY OF BARRON v. BARRON COUNTY
TELEPHONE COMPANY AND HILLSDALE AND WESTERN
TELEPHONE COMPANY.

U-443.

Decided July 6, 1915.

**Establishment of Physical Connection Ordered — Terms for Interchange
of Service Fixed.**

Petitioner sought the establishment of physical connection between the lines of the respondent companies at Hillsdale or Barron.

The Barron County company operated an exchange at Barron and also maintained a pay station at Hillsdale, but had no exchange there. The Hillsdale and Western company operated an exchange at Hillsdale and also had a line running into the city of Barron where it had ten party line subscribers, these subscribers being also subscribers to the local exchange of the Barron County company.

Although the business and social relations of the subscribers of the Barron County company and of the Hillsdale company were very close, telephonic communication between Barron and Hillsdale was possible only by means of the few local telephones of the Hillsdale company located in Barron and connected with the Hillsdale exchange and by a roundabout toll route.

Held: That public convenience and necessity require the establishment of physical connection between the lines of the respondent companies;

That as the Barron company has a clear metallic line between Barron and Hillsdale, the connection should be made at the exchange of the Hillsdale company;

That a toll charge of 10 cents should be collected for all messages in either direction between Barron and Hillsdale, the Barron County company to receive the entire toll of 10 cents for all messages originating on the lines of the Hillsdale company for subscribers of the exchange at Barron,

and the Hillsdale company to receive 5 cents on all calls originating on or transmitted over the lines of the Barron County company and destined for subscribers of the Hillsdale company; any extra compensation thus received by the Barron County company being no more than adequate to remunerate it for its investment in, and maintenance of, the toll line;

That for all messages originating on the lines of the Hillsdale company for points other than Barron on the lines of the Barron County company the toll charge shall be the regularly established toll.

OPINION AND DECISION.

The complaint alleged that the Barron County Telephone Company operates an exchange at Barron with an office at Hillsdale and that the Hillsdale and Western company operates an exchange at Hillsdale and a line with numerous subscribers thereon at Barron, that said companies have been requested to connect at Hillsdale or Barron but neglected to do so, and petitioners ask that they be required to connect either at Barron or Hillsdale on terms and conditions to be fixed.

The matter came on for hearing at Barron on July 3, 1915, and appearances were as follows: *Mr. Clarence C. Coe*, of *Coe Brothers*, appearing for the city of Barron; *Mr. Charles A. Taylor*, appearing on behalf of the Barron County Telephone Company; *M. W. Stephenson*, president, *Peter Hughes*, secretary, and *Fred Hoxie*, member of the board of directors of the Hillsdale and Western Telephone Company, appearing on behalf of the said company.

The Barron County Telephone Company operates exchanges at Barron and Rice Lake and has a toll connection with exchanges of other companies at Barron, Augusta, Haugen, Mikana, Cameron, Campia, Chetek, Dallas, Prairie Farm, Ridgeland, Paskin, Turtle Lake, Cumberland and Almena. It has a pay station at Hillsdale, but has no exchange connection there. Hillsdale is about six miles south of Barron and the respondent, the Hillsdale and Weston company, operates an exchange there and also at Arland and has connection with other exchanges at Dallas, Almena, Cameron and other places and by mutual arrangement the Hillsdale company exchanges free service with

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these connecting companies. Its lines are grounded. The Hillsdale company also has a line running into the city of Barron where ten subscribers are on its party line, these subscribers being also subscribers to the local exchange of the Barron County Telephone Company. There never has been any connection between the respondents.

It appeared clearly from the testimony that the relations between Barron and the subscribers of the Hillsdale company were very close in a business and social way and that there was much cause for telephone connection between the subscribers of the Barron County Telephone Company in Barron and the subscribers of the Hillsdale and Western Telephone Company. At present the only way that people in Barron can get telephone connection with Hillsdale subscribers is through the few local 'phones in the city of Barron connected with the Hillsdale exchange or else through long distance over the Barron County line by the way of Dallas where the local exchange is connected with the Hillsdale company. This roundabout route service is very unsatisfactory, and the present toll charge by this route is 15 cents. It was practically conceded by all parties that public convenience and necessity required a connection to be made either at Hillsdale or the city of Barron. There being a clear metallic line of the Barron County Telephone Company between the city of Barron and Hillsdale, it appears that the most practicable and economical connection can be made at the exchange of the Hillsdale company at Hillsdale.

The Hillsdale company, as we have shown, has already established some connection in the city of Barron which is and will be a free service; a certain portion of such business is bound to be over this line of the Hillsdale company and to that extent must reduce any toll service over the line of the Barron County Telephone Company at Hillsdale. This being so, it was felt that a toll charge of 10 cents between Barron and Hillsdale would be a reasonable and fair toll rate. The main question was as to the division of the 10-cent toll rate; the Barron County Telephone Company owning the toll line, which it has to maintain, it was

felt either that the Hillsdale company should pay some stated sum to remunerate the Barron County Telephone Company for its investment in and maintenance of this line if an equal division of tolls was to be made, or that in lieu thereof a larger proportion of the tolls should be paid to the Barron County Telephone Company. It was suggested that the Barron County Telephone Company should receive the entire toll of 10 cents for all calls originating on the Hillsdale lines going into the exchange at Barron and the Hillsdale company should receive 5 cents for all calls originating or transmitted on the lines of the Barron County Telephone Company going to subscribers of the Hillsdale company, and that any extra compensation thus received by the Barron County Telephone Company would no more than adequately remunerate it for its investment in, and maintenance of, the toll line. It was thought that such an adjustment would be equitable, especially in view of the fact that many of the Hillsdale calls into Barron will go over the lines of the Hillsdale company. Both companies agreed that any calls originating on its line for subscribers on the lines of the other company should be routed through Hillsdale and not through any other points where mutual connections might exist. Other possible solutions were suggested, but there not being any traffic data available it was impossible to predict exactly what would be the result of either the above suggested plan or any other suggested plan, and finally it was agreed that the connection should be made along the lines suggested and if after a fair trial and the collection of traffic data either party felt that the arrangement was inequitable the Commission would make a further investigation.

Now, therefore, upon all of the records, files and testimony in said proceeding it is hereby found that public convenience and necessity requires that a physical connection be made between the lines of the respondents at the exchange of the Hillsdale and Western Telephone Company at Hillsdale and that such use will not result in irreparable injury to the owner of either the Barron County Telephone

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Company or the Hillsdale and Western Telephone Company or to the equipment of either, nor in any substantial detriment to the service to be rendered by either.

It is, therefore, ordered, That physical connection be made between the lines of the Barron County Telephone Company and the Hillsdale and Western Telephone Company at the exchange of the Hillsdale and Western Telephone Company at Hillsdale, Wisconsin; that such connection be made within ten days by the Barron County Telephone Company at its own expense.

It is further ordered, That upon such connection being made there shall be interchange of telephone messages between said companies upon the following terms: For all messages originating on the lines of the Hillsdale and Western Telephone Company for subscribers having connection at Barron with the exchange of the Barron County Telephone Company, there shall be a toll charge paid the Barron County Telephone Company of 10 cents, and for all of such originating messages destined for any other point on the lines of the Barron County Telephone Company the toll charge shall be the regularly established tolls for such messages. For all messages originating on the lines of the Barron County Telephone Company or being transmitted by them and destined for subscribers to the Hillsdale and Western Telephone Company there shall be paid to the Hillsdale and Western Telephone Company a toll charge of 5 cents. Each company shall get its proper proportion of any over-time charges. Each company shall be liable for toll charges hereinbefore provided for originating upon, or being transmitted over, its lines, and each company shall on or before the fifteenth day of each month render to the other company an itemized statement of account, and settlement shall be made between the companies once every three months commencing on October 1, 1915. Neither company shall route any messages originating on its own lines or being transmitted by it destined to subscribers of the other by any other route than through the Hillsdale connection. The Hillsdale and Western Tele-

phone Company shall not be liable for maintenance or upkeep of the line between Barron and Hillsdale which shall be maintained and kept up by the Barron County Telephone Company. The Barron County Telephone Company shall charge its subscribers at Barron 10 cents for talking through the Hillsdale exchange.

If after a fair trial and the collection of traffic data either party hereto feels that the terms herein provided for are inequitable or unjust in any particular, application may be made to the Commission for further investigation and action.

Dated at Madison, Wisconsin, July 6, 1915.

CANADA.

Board of Railway Commissioners.

APPLICATION OF THE ERNESTOWN RURAL TELEPHONE COMPANY, LIMITED, FOR A RULING OF THE BOARD AS TO THE MEANING OF CLAUSE 8 OF THE STANDARD FORM OF CONNECTING AGREEMENT BETWEEN THE BELL TELEPHONE COMPANY AND THE INDEPENDENT TELEPHONE COMPANIES.

File No. 3839.105

Decided May 17, 1915.

Clause 8 of the Standard Form of Connecting Agreement between The Bell Telephone Company and the Independent Companies
Interpreted.

Applicant asked the Commission whether or not under Clause 8 of the standard form of connecting agreement between the Bell company and the independent telephone companies, the Bell company was bound to collect an "other line" charge on certain messages originating on the Bell company's lines and terminating on the lines of the applicant. Clause 8 provided that the charge for each message transmitted to or from points on the lines of the local company from or to points on the Bell system, should be the established long distance rate of the Bell company plus the charge of the local company, each company to receive its own charge, and the company on whose line the call originated to collect and be responsible for such charge, provided that the Bell company should not be obliged to collect and be responsible for the charge of the local company if the latter failed to collect a like charge on messages originating on its own lines.

The applicant company, which was furnishing service to its subscribers at a flat rate, charged non-subscribers a 10-cent rate for all messages both in and out on its system, but did not make an additional charge to a subscriber who made a long distance call over the lines of the Bell company. The question to be determined was whether on these facts the Bell company was obliged to collect an "other line" charge from those who were obliged to pay such "other line" charge on messages either in or out over the local company's lines.

Held: That under Clause 8 the obligations in respect to "other line" charges are mutual, i. e., if the Bell company is asked to collect the charge of the applicant company in respect to a message originating on

the Bell company's lines, the applicant company must similarly collect in respect to a message originating on its own line, and this obligation attaches to *all* calls; that the choice is between this mutual obligation in respect to all calls and the situation where the Bell company has no obligation to collect in respect to a call terminating upon the lines of the applicant company.

OPINION.

The agreement in question is set out in the Board's General Order No. 114. Clause 8 reads as follows:

"8. The charge for each message or conversation transmitted to or from points on the system of the proprietor and to or from points on the system of the Bell company other than * * * shall be the established long distance rates of the Bell company, plus the proprietor's charge of * * *, each party to receive its own charge, and the party on whose line the call originates shall collect and be responsible for such charge. *Provided, however,* that the Bell company shall not be obliged to collect and be responsible for the proprietor's charge if the proprietor fails to collect a like charge on messages originating on the proprietor's system."

The applicant telephone company states that it has a 10-cent rate both in and out on its system, to non-subscribers. A flat rate is charged on the system to its subscribers, and as a consequence of this the company does not make an additional charge to a subscriber who makes a long distance call to a point on the Bell lines. The applicant states that it considers that the Bell company should pay a line charge on its system, and says further that it cannot see why the Bell company should not be responsible for the collection of same when the messages originate on their system, whether the subscribers of the applicant company pay a line rate or not. The applicant company thinks it assumes sufficient responsibility when it becomes responsible for the Bell long distance line rate in respect of a call originating on the applicant company's system.

In reply, the Bell company states that it does not consider that the fact that the applicant's subscribers pay a flat rate per annum is relevant to the discussion. It further states that if the Bell subscribers are to be charged an "other line" fee on inward calls to the applicant's system, while the applicant's subscribers are not to be charged

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a similar fee on outward calls, it is apparent that there will be an unjust discrimination in favor of the subscribers of the applicant's system; and it states that while it is not particular as to whether the "other line" charge on long distance connection with the applicant company should be continued, if the applicants desire such an "other line" charge on long distance calls inward from Bell points, it is proper there should be a similar charge on outward calls to Bell points.

It will be noted that the applicant considers that the Bell company is in the same position as a non-subscriber.

In summing up its position, the applicant company submits the following questions for answer:

"First. As we are only asking the Bell company to collect for messages originating on their system from those who must pay the same either in or out on our system, is the Bell company, not bound by Clause 8 to do so?

"Second. If the Bell company is not bound to do so, but rather refuses to do so, are we as a company not relieved of any responsibility *re* the collection of their charges where the messages originate on our system?"

Clause 8 was one which was arrived at by consent of the parties in the hearings which led up to the issuance of General Order No. 114 as it now stands. Where there are explicit words of consent, these speak most authoritatively as to what the intention was. In the printed draft agreement which was before the Board during the hearing, Clause 13 read as follows:

"That the charge for each message or conversation transmitted to or from points on the system of the proprietor and to or from points on the system of the Bell company other than * * * shall be the established long distance rates of the Bell company, plus the proprietor's charge of * * *, each party to retain its own charge."

During the course of the hearing, the following words were added, "and the party upon whose line the call originates shall be responsible for such charge." The amended clause then read:

13. That the charge for each message or conversation transmitted to or from points on the system of the proprietor and to or from points on

the system of the Bell company other than * * * shall be the established long distance rates of the Bell company, plus the proprietor's charge of * * * each party to retain its own charge, and the party upon whose line the call originates shall be responsible for such charge."

When this Clause 13 was before the Board at its hearing in Toronto on February 10, 1912, its significance was explained by Mr. Sise for The Bell Telephone Company. His statement was in substance this: There should be a charge for each message or conversation transmitted to or from points on the system of the proprietor and to or from points on the system of the Bell company, such charge to be the established rate of the Bell company plus the proprietor's charge. He stated that the practice in a great many cases had been for the local company not to charge its subscribers in case of an out-going message. Continuing he said that where the Bell company collected 15 cents on a call from Toronto to a place and turned it over to a local company, the situation was that the rate inbound was the Bell long distance rate plus this 15-cent charge, while the subscriber of the local company in telephoning out paid only the long distance call to the Bell. This was stated to create a discrimination and it was submitted that it ought to be stipulated it should be collected both ways when enforced at all.

Counsel for the independent telephone companies, on being questioned by the Chief Commissioner as to his position in regard to the matter, stated that he saw no objection to the situation being handled in the way set out in the proposed clause.

Further discussion took place in regard to the matter of collection, and it was agreed that in order to make the matter clear the following words should be added to the clause:

"and the party upon whose line the call originates shall be responsible for the collection of such charge."

It would appear that the intent of Clause 13 of the original draft agreement is now contained in Clause 8.

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Clause 8 in its present form was also agreed on by the parties.

In view of the history of the clause, it appears that the intention was that the obligations in respect of the "other line" charges should be mutual; that is to say, if the Bell company is asked to collect the charge of the applicant company in respect of a message originating on the Bell company's line, the applicant company must similarly collect in respect of a message originating on its own line; and this obligation attaches to all calls. The choice is between this mutual obligation in respect of all calls and the situation where the Bell company has no obligation to collect in respect of a call terminating on the lines of the applicant company.

What has been said answers question No. 1 of the applicant company, and this answer to question No. 1 obviates the necessity of answering question No. 2.

May 17, 1915.

COMPLAINT OF REV. H. DESROCHES OF QUEBEC THAT HE IS
CHARGED A BUSINESS RATE INSTEAD OF A RESIDENCE RATE
FOR HIS TELEPHONE BY THE BELL TELEPHONE COMPANY.

File No. 3574.140.

Decided July 8, 1915.

**Residence Rate Held Applicable to Telephone in Presbytery of Parish
Priest Since Other Clergymen Similarly Situated
Paid the Residence Rate.**

Complaint was made that The Bell Telephone Company had notified the complainant that the telephone in his residence, which was listed in the directory as "Presbytere, Notre Dame de la Garde" would henceforth take the business rate instead of the residence rate.

The telephone in question besides being used for strictly residential purposes, was also put to the use that any clergyman of any denomination in charge of a parish would make of a telephone.

The company contended that as the telephone was in the name of the presbytery and not in the name of the priest personally, this case differed from the case of other clergymen having telephones in their residences for which the residence rate was charged.

The company further contended that as the telephone was used in the

administration of parish affairs, it would take the business rate, although the residence rate would be applicable to a telephone installed in a clergyman's residence where said telephone was for personal use, and where the clergyman having said telephone was not charged with the secular administration of the parish.

Held: That as presbytery merely means the residence of a clergyman in charge of a church, it is immaterial whether the telephone is listed in the clergyman's name or in the name of the presbytery;

That it is not necessary to decide the point whether or not the use made of the telephone in question is a business use, since the equality clause of the Railway Act has been violated in that a number of clergymen in charge of churches and similarly situated to the complainant are being charged the residence rate;

That the circumstances and conditions of the use of the applicant's telephone and the use of telephones of a number of other clergymen in Quebec who paid only the residence rate being substantially similar, the company erred in changing the rate of the applicant's telephone from residence to business.

OPINION.

In the city of Quebec the rate for a business telephone is \$40.00 per annum; and for a residence telephone \$25.00 per annum, with extras for desk 'phones, extra wiring, etc.

Prior to the first of January last, Rev. Father H. Desroches, the parish priest of Notre Dame de la Garde, had a telephone in his residence which was described in the telephone directory as "Presbytere, Notre Dame de la Garde." For this service he paid \$25.00 per annum, plus \$2.00 extra for a desk 'phone. On the eighteenth of November, 1914, he was notified that his rate would be increased to the business rate of \$40.00 per annum on the first of January, 1915.

The complainant contends that he should not be charged a business rate and asks that the company be ordered to continue his service for the residence rate. The notice that was served on the complainant by the local manager of The Bell Telephone Company in Quebec, dated November 8, 1914, contained the following paragraph, which has been translated from French into English:

"We have been informed that under the Railway Act we must under circumstances and conditions materially identical, charge uniform telephone rates to everybody; and that in consequence it is not advisable to continue charging the reduced rates you have been enjoying in Quebec."

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The contention of the company contained in a letter to the Board from its general counsel, dated June 9, is as follows:

"That the question as to whether or not the business rate is asked depends not so much upon whether the subscriber is a clergyman but upon whether the telephone is located in the sort of place from which it is obvious that the administration or business of the church or parish is carried on. In other words, we endeavor to apply the same principles as govern us in deciding whether or not the telephone of a layman is liable for the business rate. For instance, if the telephone is in the vestry or parish house of the church, or presbytery of the parish, or other similar place, we ask payment of the business rate, but we do not do so where the telephone is so situated that it is clearly installed only for personal use, such as where there is one telephone at the church, and another telephone at the clergyman's residence, nor do we ask such of the parochial clergy as have not the secular administration of the parish in their hands to pay the business rate."

Rev. Father Desroches' telephone is in his residence and is used by his house-keeper for securing supplies for the house. It is also used by Rev. Father Desroches in connection with the affairs of his church, and by those who wish to speak to him about the affairs of his church. From the evidence, it appeared to me to be practically the same use that any clergyman of any denomination in charge of a parish would make of a telephone in his residence. Rev. Father Desroches is liable to be called on his telephone to visit the sick of his parish, or to arrange for a wedding or funeral service. This seems to me to be the use that might be made of a telephone in any clergymen's residence. It was contended by the company at the hearing that Rev. Father Desroches' case was somewhat different from others, because the telephone was in the name of the presbytery and not in his name personally. I do not see that that makes any difference. A presbytery is the residence of a clergyman in charge of a church, and has the same meaning as manse or rectory.

It is not necessary to decide the point raised by the company, already quoted from its counsel's letter of the ninth of June, that the use made of his telephone by Rev. Father

Desroches is really a business use, because in my opinion the equality clauses of the Railway Act have been violated in this case. On the question of the business use of a clergyman's telephone, I would like, however, to point out in passing that unlike other professional men, or business institutions, a clergy in no way depends on the telephone for the remuneration he gets from his parishioners for his support. If Rev. Father Desroches' telephone was taken out, it would doubtless cause him some inconvenience, but it would not result in any financial loss to him. He would get exactly the same remuneration from his parish as he would get were the telephone maintained in his residence.

Section 315 of the Railway Act, which applies to The Bell Telephone Company, requires that all tolls shall always, under substantially similar circumstances and conditions, be charged equally to all persons at the same rate. The notice that the company's manager in Quebec sent the applicant last November shows that he was well aware of this provision of the statute.

I have gone over The Bell Telephone Company's list of subscribers in the city of Quebec. I find that approximately 47 clergymen of all denominations have telephones. Of this number 17 pay the residence rate, and a number of the 17 are in charge of churches and are similarly situated to the complainant.

I have, therefore, come to the conclusion that the circumstances and conditions of the use of the applicant's telephone, and the use of the telephones of a number of other clergymen in Quebec, who only pay the residence rate, being substantially similar, the company erred in changing the rate of the applicant's 'phone to the business rate in January last. The applicant is entitled to get a telephone at the residence rate and should get credit for any amount he may have paid since January in excess of that amount.

Ottawa, July 8, 1915.

PART II.

SELECTED COMMISSION ORDERS, RULINGS AND
DECISIONS OF INTEREST TO TELEPHONE
AND TELEGRAPH COMPANIES.

CALIFORNIA.

Railroad Commission.

IN THE MATTER OF THE APPLICATION OF ORO ELECTRIC CORPORATION FOR A CERTIFICATE THAT PUBLIC CONVENIENCE AND NECESSITY REQUIRE THE EXERCISE BY IT OF CERTAIN RIGHTS AND PRIVILEGES UNDER FRANCHISE HERETOFORE GRANTED TO IT BY THE CITY OF STOCKTON, SAN JOAQUIN COUNTY, CALIFORNIA.

Application No. 844 — Decision No. 2500.

Decided June 19, 1915.

Application for Authority to Exercise Rights under a Franchise which Municipality was without Legal Power to Grant, Dismissed.

ORDER OF DISMISSAL.

EDGERTON, *Commissioner*:

Oro Electric Corporation having, on November 25, 1913, filed with this Commission the above entitled application for a certificate of public convenience and necessity to exercise certain rights and privileges alleged to be granted to applicant by the city of Stockton in Ordinance No. 566 of said city, approved December 30, 1912, and the Supreme Court of California having on February 24, 1915, in *Oro Electric Corporation v. Railroad Commission of the State of California*, reported in Vol. 49, California Decisions, page 286, rendered a decision* holding that the city of Stockton did not have power to grant to Oro Electric Corporation the very franchise which is the subject of this

* Noted in Commission Leaflet No. 42, p. 290.

application, and it appearing, therefore, that this is an application for authority to exercise rights under a franchise which the city of Stockton did not legally have the power to grant to applicant,

It is hereby ordered, That this application be, and the same is hereby, dismissed.

The foregoing order is hereby approved and ordered filed as the order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this nineteenth day of June, 1915.

INDIANA.

Public Service Commission.

HYDRO-ELECTRIC LIGHT AND POWER COMPANY, *ex parte*.

No. 1508.

Decided May 14, 1915.

**City Held to Be Without Power to Contract with Utility Fixing Price
for Service for Period of Years.**

OPINION AND ORDER.

Comes now the city of Connersville, Indiana, by its mayor, Philip Braun, and its city clerk, W. L. Schaefer, and files a verified petition asking that the Public Service Commission approve a contract between the city of Connersville and the Hydro-Electric Light and Power Company, of Connersville, Indiana.

Comes now also the Hydro-Electric Light and Power Company of Connersville, Indiana, and files a verified petition signed by E. D. Johnston, president of the Hydro-Electric Light and Power Company, and asks the Public Service Commission to approve and ratify a contract between said company and the city of Connersville, Indiana, to authorize said Hydro-Electric Light and Power Company to proceed with the construction of the necessary lines and equipment for the purpose of carrying out said contract, and for all other proper relief in the premises.

The Public Service Commission of Indiana, having the above-entitled cause under consideration and being duly advised in the premises, finds that the following contract is a contract that said city and said utility have asked the Public Service Commission to approve:*

* * * * *

The Public Service Commission further finds that in Section 7 of the above set out contract the city of Conners-

* Copy of contract omitted.

ville and the utility attempted to contract for a period of ten years at a specified price to be paid by the city for certain services furnished said city by said utility. It is the opinion of the Public Service Commission that the Utility Commission Act of Indiana does not contemplate that cities and utilities may enter into a contract for a period of years, fixing a price to be paid for service, but that said price shall always be subject to investigation and change by the Public Service Commission of Indiana, should the evidence produced in such investigation warrant such change.

The Public Service Commission further finds that all other sections and parts of said contract should be approved.

It is, therefore, ordered by the Public Service Commission of Indiana, That the above set out contract between the Hydro-Electric Light and Power Company and the city of Connersville, county of Fayette, and State of Indiana, should be, and the same is here now, approved in all sections and parts except that part which provides for a fixed compensation between said utility and said city for a term of years.

May 14, 1915.

CITIZENS GAS COMPANY OF INDIANAPOLIS v. CITY OF INDIANAPOLIS.

No. 1500.

Decided June 4, 1915.

City Ordinance Held Unreasonable and Declared Null and Void.

Held: That a city ordinance requiring a gas company to extend service pipes from its mains to every property abutting on any street or alley before said street or alley should be permanently improved and within 30 days of a resolution by the board of public works ordering the permanent improvement of any street or alley, and further providing that in case of failure or refusal of the company to lay said pipes, the board of public works should proceed to have said pipes laid at the company's expense, is unreasonable and should be declared void.

ORDER.

Comes now the Citizens Gas Company of Indianapolis and files its petition to have declared void an ordinance of said city of Indianapolis known as General Ordinance No. 67, 1914.

Said petition further represents that petitioner is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana; that its principal business is in the city of Indianapolis, Marion County, and State of Indiana, and that it is a public utility engaged in the maintenance, management and operation of an artificial gas plant in said city, and as such public utility it is subject to the provisions of the ordinances of said city, and of the laws of said State; that on the nineteenth day of April, 1915, said city, by its common council, passed and enacted the following ordinance* known as General Ordinance No. 67, 1914.

* * * * *

And that on the third day of May, 1915, said ordinance was vetoed by the mayor of said city, and that on said third day of May, 1915, said ordinance was re-enacted and passed over said veto.

It is further alleged that by virtue of the provision of said ordinance the Citizens Gas Company of Indianapolis is required, and it is made the duty of said company, to lay and provide at its own expense service pipe from any and all of its main pipes to the property line of each and every property abutting on any street or alley in said city before such street or alley shall be permanently improved and within thirty days after the adoption of a resolution by the board of public works of said city, ordering the permanent improvement of any street or alley in said city; and that in case of the default of said company's laying such service pipes at its own expense as may be required of it, the board of works is authorized and required to proceed to lay such pipe at the expense of said

* Copy of ordinance omitted.

company, and the contractor making such improvement is authorized to collect from said company the cost of making such connections; that the cost of making such connections in all streets and alleys as they are permanently improved would be very great and would require a very large investment of said Citizens Gas Company in such equipment, and that such investment so made would be unreasonable and far in excess of the necessary investment of said company because a large portion of such pipe connections would not be used or useful to said company in furnishing artificial gas to said city and the citizens thereof, because of the fact that many of the said lots would remain vacant; and that such unreasonable, excessive and unnecessary investment of said company would create and constitute an unjust charge and burden on said company, and prevent its customers from enjoying the most reasonable possible rate for such gas service; that until such service pipes are used and become necessary to furnish artificial gas to the abutting property owners, said company should not be required to furnish or pay for the same; and that said ordinance in requiring said company to furnish and pay for all such service pipes and connections before any street or alley in said city is permanently improved, without regard to the pipes and such connections being used at the time, or at any future period, is unreasonable and such ordinance should be declared void, and held to be of no force and effect, and

WHEREAS said city of Indianapolis, by its corporation counsel, *W. A. Pickens*, entered the appearances of said city in this cause;

And the Commission, having heard the evidence, finds that the allegations of the petition are proven and true;

It is, therefore, ordered, That Ordinance No. 67, 1914, of the city of Indianapolis, Indiana, as enacted on April 19, 1913, and re-enacted and passed over the veto of the mayor of said city on May 3, 1915, is unreasonable in its terms and requirements, and is hereby declared void.

June 4, 1915.

IN THE MATTER OF THE APPLICATION FOR APPROVAL OF THE
PURCHASE BY THE CLEVELAND, CINCINNATI, CHICAGO AND
ST. LOUIS RAILWAY COMPANY OF THE RAILWAY PROPER-
TIES OF THE CINCINNATI, WABASH AND MICHIGAN RAIL-
WAY COMPANY.

No. 491.

Decided June 5, 1915.

**Consolidation of Non-competing Railways Authorized — Requirement
that Railways to be Consolidated Must be Non-competing
Discussed.**

Petitioners sought an order of the Commission approving the purchase by the Cleveland, Cincinnati, Chicago and St. Louis Railway Company of the railroad and properties of the Cincinnati, Wabash and Michigan Railway. The Cleveland, Cincinnati, Chicago and St. Louis Railway had owned since May 6, 1891, the entire outstanding capital stock of the Cincinnati, Wabash and Michigan Railway and had controlled said railway as fully as if it had been the absolute owner of the same.

Held: That while there has been no apparent reason since the enactment of the Interstate Commerce Commission Law and of the Railroad Act of Indiana of 1907, why competing lines should not be consolidated, if such consolidation would effect economies, nevertheless, the Act of 1913 declares it to be the public policy of Indiana that competing railroad lines shall not be consolidated. In order to conform to this statute it must appear that the lines seeking consolidation are not competing;

That, however, it was evidently not the legislative intention that competition, however slight and insignificant, should preclude the consolidation of railroad properties, but only such competition as was substantial or of some practical importance;

That in view of the various decisions of courts as to what constitutes competing lines, and considering the fact that there has not been any competition between the lines of the petitioners since 1891 and that consolidation of the properties would permit greater economies in transportation, the petition should be granted.

OPINION AND ORDER.

On the twenty-sixth day of January, 1914, the Cleveland, Cincinnati, Chicago and St. Louis Railway Company and the Cincinnati, Wabash and Michigan Railway Company, filed with the Public Service Commission of Indiana, a petition.*

* Copy of petition omitted.

The prayer of the petition is that an order be entered by the Public Service Commission of Indiana, approving the purchase by the Cleveland, Cincinnati, Chicago and St. Louis Railway Company of the railroad and properties of the Cincinnati, Wabash and Michigan Railway Company upon the terms and conditions agreed upon as shown by the resolutions adopted. * * *

The petition was heard by the Commission on the first day of April, 1914. The petitioners were represented by *E. T. Glennon* and *H. D. Howe*, attorneys, and *Robert J. Cary* and *Bertrand Walker*, of counsel.

This proceeding was instituted under an Act approved March 10, 1913, Acts of 1913, page 462. The first and second sections of which are as follows:

"Section 1. That whenever a railroad company organized (under) the laws of this State, and another state or states, and being a citizen of this State shall be in possession by ownership or lease of a railroad forming a through line with or which is connected with a railroad belonging to or held under lease by a railroad company organized as aforesaid, then either of said companies so organized may sell and convey said railroad so possessed by it or any part thereof to said other company so organized and said other company may purchase and acquire such railroad or any part thereof together with all the rights, powers, privileges, franchises, immunities and other properties used in connection therewith or pertaining thereof, or may lease to said other company such railroad or any part thereof upon such terms and conditions as may be agreed upon between the board of directors of the respective companies, and thereupon and thereafter the railroad company so purchasing shall hold in fee or otherwise and forever use and enjoy the property so purchased and acquired and may exercise the powers, privileges, immunities and franchises of the company whose property is so purchased and acquired, and the company so purchasing, when necessary or proper, may exercise the power of eminent domain in acquiring lands or property necessary or convenient for betterment, maintenance, extension or operation of such railroad and for the construction, use and maintenance of spurs, switches, sidetracks, depots, stations, terminals and other facilities to be used in connection with such railroad: *Provided, however,* Said sale and purchase or lease shall be approved by the stockholders owning not less than two-thirds in amount of the capital stock of the respective companies becoming parties to such purchase and sale or lease, and such approval may be given at any annual or special meeting called in the same manner that annual meetings are called and upon sixty day's notice being given to all

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the shareholders of the question to be acted upon by a publication in some newspaper published in the county or counties where the principal office or place of business of the company or companies aforesaid may be situated or located: *Provided, further*, That the company which purchases or leases any such railroad shall operate the railroad in this State and hold such property situated within this State, and the franchises so acquired, subject to all the rights, powers, privileges, duties and obligations prescribed by the general railroad laws of this State for the regulation, government, taxation, or control of railroad companies organized or which may be organized under the laws of this State; *And Provided, further*, That this act shall not be construed so as to permit any railroad company to purchase or lease any competing line of railroad in this State; *And Provided, further*, That no railroad company, not organized under the laws of the State of Indiana, shall hereafter become the owner by purchase of any line of railroad or part or appurtenances thereof, situate in the State of Indiana and nothing in this Act shall be construed to give power to any railroad company not incorporated under the laws of the State of Indiana, to hereafter become the purchaser of any such railroad or part thereof situated in said State."

"Section 2. No such sale and purchase or lease shall be perfected until a meeting of the stockholders of each of the companies has been called for that purpose as hereinbefore provided, and the holders of at least two-thirds of stock of each company in person or by proxy, at such meeting, assent thereto."

The sixth section of the Act requires the approval of such purchase by the Commission.

* * * * *

From [May 6, 1891] to the present time the Cleveland, Cincinnati, Chicago and St. Louis Railway Company has owned the entire outstanding capital stock of the Cincinnati, Wabash and Michigan Railway, and has built the line from Anderson south to Rushville, and from Goshen north to Benton Harbor. It has controlled the Cincinnati, Wabash and Michigan Railway Company as completely and fully as if it had been the absolute owner of the same during all that time.

Each averment of the petition has been proved, and the only question that has been open for discussion is whether the two roads are competing lines. In this State, in the

* Location of roads and early history omitted.

absence of legislative authority, one independent railroad company could not lawfully acquire the entire property of another independent railroad company. It was the purpose of the legislature of 1913 to provide a plan by which properties held as the Cleveland, Cincinnati, Chicago and St. Louis Railway Company has for a quarter of a century held the property of the Cincinnati, Wabash and Michigan Railway Company could lawfully be taken over. The present situation requires the complete perpetuation of the organization of an independent line when the perpetuation of such an organization is wholly unnecessary, and is a mere technical device to apparently conform to the law, but which does not conform to the law.

The maintenance of the separate corporations organized and the perpetuation of corporate machinery is expensive and unnecessary and ought to be avoided as soon as it can lawfully be avoided.

Since the enactment of the Interstate Commerce Law, and its subsequent amendments providing for the determination of just and reasonable rates, and since the enactment of the Railroad Act of the State of Indiana in 1907, there has been no apparent reason why competing lines even should not be consolidated, if such consolidation would effect economies. However, the Act of 1913 declares it to be the public policy of this State that competing railroad lines may not be consolidated. The legislative declaration is conclusively presumed to declare the public will. Therefore, it is necessary in order to conform to the recent statute that the lines seeking consolidation shall not be competing lines. It was evidently not the legislative intention that competition, however slight and insignificant, should preclude the consolidation of railway properties even though they intersect at right angles. Wherever such intersection exists it is inevitable that there are shippers or receivers of freight who would find, from the distances, the topography and the character of highways, an opportunity to choose between the crossing lines for their shipments.

In *Rogers v. Nashville, etc.*, 91 Fed. 299, the court said:

"Looking to the territory occupied by these lines of railway taken as a whole, and the commerce which would naturally flow over the lines as originally constructed, whether this commerce be regarded as through shipments or local traffic, the lines are in no sense competitive. If the fact that, by intersection with another line, they may in that way, to an extent, compete for such business as is incidentally furnished by intersecting lines, renders them competitive, it would virtually result that all lines of railway in the country would be competitive in a legal sense, while they would not be so according to a common understanding nor in the sense of commerce."

This was expressly approved by the Circuit Court of Appeals in an opinion by Judge Lurton.

In *Noyes on Intercompany Relations*, Section 37, it is said:

"To render railroads competing lines, they must be substantial competitors for business. The competition must be of some practical importance, such as is liable to have an appreciable effect on rates."

In *State v. Montana Railway Company*, 53 Pac. 623, the court said:

"Whether lines of road are competitive or not depends upon the business of the companies, the conduct of the roads by their authorities, their channels of traffic, and generally—nearly always—upon whether the roads extend for transportation from and to the same points along their routes."

In *Kimball v. Atchison, Topeka and Santa Fe*, 46 Fed. 888, the court says:

"That when the statute speaks of competing roads, it evidently means roads that are substantial competitors for business; it refers to competition of some practical importance, such as is liable to have an appreciable effect on rates, and in that sense the road to Union was not, in my judgment, a competing line."

The evidence in this case establishes the fact that there is not now, nor has there been any competition between these two petitioners since 1891.

In Illinois State Trust Company v. St. Louis, Iron Mountain and Southern Railway Company, 217 Ill. 504, the court said:

“ Under such circumstances it was entirely impracticable for the appellee company to attempt to compete for business either way between Cairo and St. Louis. Moreover, the proof shows that the appellee company did not attempt to compete for such business. It appeared that the appellee company maintained an office in Cairo and that it published a tariff rate from Cairo to St. Louis, but the testimony showed that the office was maintained there for the purpose of soliciting freight and passenger business for points southwest of Cairo and the tariff of rates was published because the statutes so required. The general traffic manager of the appellee road testified that his instructions did not warrant their agent in Cairo to solicit business from that point to St. Louis; that the company did not solicit or encourage traffic either way between Cairo and St. Louis and had never done so; that the appellee company recognized that it was commercially impossible for it to compete with the Illinois Central and Mobile and Ohio railroads for business between those cities, and that the appellee company did not make a competing freight or passenger rate, or install through trains, or make any other effort to secure business between those cities. Representatives of the branch of the Illinois Central Railroad from St. Louis to Cairo testified that that road was the competing line with the Mobile and Ohio Railroad for Cairo and St. Louis business; that they did not regard, and had never regarded, appellee's road as a competitor, . . . as it took no business between those points worthy of consideration. . . . It therefore very plainly appeared from all the testimony that the Valley Railroad at either terminus or at any intervening point, was not and is not a competing line of road with that of the appellee, and is not a parallel line of railroad either within the technical geometrical definition of the word ‘parallel,’ or within the more enlarged and practical meaning which, when the element of competition is present, should be given to the term ‘parallel line’ as employed in the statute under consideration.”

In view of these authorities and in the light of the evidence that the consolidation of these properties would render it more economical in transportation, it is the judgment of the Commission that the prayer of the petition ought to be granted.

It is, therefore, ordered by the Public Service Commission of Indiana, That it should, and does hereby, approve the purchase by, and conveyance to, the Cleveland, Cincin-

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nati, Chicago and St. Louis Railway Company of the entire railroad and properties of the Cincinnati, Wabash and Michigan Railway Company, together with all rights, powers, privileges, franchises, immunities, interests, estates, claims and other properties, real or personal, used in connection with or pertaining to Cincinnati, Wabash and Michigan Railway Company, or belonging to said company; upon condition that the Cleveland, Cincinnati, Chicago, and St. Louis Railway Company shall assume all leases, contracts, obligations, mortgages and liens, bonded or otherwise, pertaining to, connected with, or outstanding upon, said Cincinnati, Wabash and Michigan Railway Company; and upon the further consideration that the Cleveland, Cincinnati, Chicago and St. Louis Railway Company shall operate the railroad and hold the property of said Cincinnati, Wabash and Michigan Railway Company, situate in Indiana, and the franchises, powers, interests and estates so acquired by it, subject to all the rights, powers, privileges, duties and obligations prescribed by laws of the State of Indiana for the regulation, government, taxation or control of railroad companies organized under the laws of Indiana.

June 5, 1915.

NEW JERSEY.

Board of Public Utility Commissioners.

WEST JERSEY AND SEASHORE RAILROAD COMPANY v. NEW JERSEY BOARD OF PUBLIC UTILITY COMMISSIONERS.

Writ of Mandamus to Compel Commission to Approve Lease Denied.

On April 22, 1915, the New Jersey Court of Errors and Appeals affirmed (See 94 Atl. 57) the decision of the Supreme Court, dated February 21, 1914, denying a writ of mandamus to compel the Commission to approve a lease which the Commission had previously refused to approve. (See Commission Leaflet No. 22, p. 1112).

PUBLIC SERVICE GAS COMPANY v. BOARD OF PUBLIC UTILITY COMMISSIONERS.

Commission's Order Sustained.

On June 14, 1915, the New Jersey Court of Errors and Appeals on rehearing (See 94 Atl. 634), without referring to its order of December 9, 1914 (See Commission Leaflet No. 38, p. 739), affirmed the judgment of the Supreme Court (See Commission Leaflet No. 23, p. 243), which had sustained the Commission's order of December 26, 1912, in the case entitled *In the Matter of the Hearing as to Whether the Existing Schedule of Rates of the Public Service Gas Company for Gas is Just and Reasonable* (See Commission Leaflet No. 15, p. 354).

IN THE MATTER OF THE DISCRIMINATION IN RATES CHARGED BY THE FARMINGDALE LIGHTING COMPANY.

Decided July 12, 1915.

Discrimination in Favor of Officers and Employees Eliminated.

APPEARANCES:

L. W. Farry, for borough of Farmingdale.

W. J. Lansley, for the company.

REPORT AND ORDER.

In making an investigation of the service supplied by this company to its customers, it was learned that widely different discounts were allowed.

The reasonableness of the rates charged by the company is mentioned in the complaint, but was not pressed by the complainants at the hearing. The Board's attention was particularly directed to certain rates alleged to be unduly preferential and unjustly discriminatory.

The rates filed with this Board provide for 18 cents per kilowatt hour with a discount of 5 per cent. if paid by the fifth day of the month, and on bills in excess of \$10.00 a discount of 10 per cent. is allowed. The officers and certain employees of the company are allowed a discount of 25 per cent.; and the linemen, a discount of 66 $\frac{2}{3}$ per cent. on their bills if paid within the same time. One customer of the company had been allowed a discount of 25 per cent., but this discount, the company states, has been discontinued. The company endeavors to justify the unusual discrimination in favor of its officers on the ground they receive no salary or other compensation, but that is not a valid reason.

It has been repeatedly held that a director, stockholder or employee of a utility company is entitled to no preference or advantage in the matter of the rate he is to pay for service. The only exceptions are those expressly made by statute. They should all be charged the regular rate. Matters of salaries and wages should be treated on a more businesslike basis than discrimination in rates for service. The Public Utility Act of this State provides that no public utility shall make any unjustly discriminatory or unduly preferential rate, charge or schedule for any service supplied or rendered by it; or make or give, directly or indirectly, any undue or unreasonable preference or advantage to any person or corporation, etc.

Under the prohibitions just referred to the practice of allowing directors, officers and employees different rates of discount than are allowed to other purchasers of electric current is clearly illegal.

It is, therefore, ordered, That the discrimination in favor of directors, officers and employees of the company be discontinued. This order shall take effect August 9, 1915.

Dated July 12, 1915.

NEW YORK.

Public Service Commission — Second District.

PEOPLE *ex rel.* NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY *v.* PUBLIC SERVICE COMMISSION, SECOND DISTRICT *et al.*

Commission's Order Reversed.

On June 8, 1915, the Court of Appeals affirmed the decision of the Appellate Division of the Supreme Court reversing the order of the Commission (See Commission Leaflet No. 19, p. 272) reducing the railroad's commutation rates (109 N. E. 252).

IN THE MATTER OF THE COMPLAINT OF LOUIS P. FUHRMANN,
AS MAYOR OF THE CITY OF BUFFALO AGAINST THE CATARACT POWER AND CONDUIT COMPANY.

Case No. 2590 — Opinion No. 219.

Decided June 24, 1915.

Order Directing Reduction of Rates Modified — Revision of Schedule Recommended.

The Cataract Power and Conduit Company and the Buffalo General Electric Company sought modifications of the Commission's orders* fixing new rates for electric service in the city of Buffalo.

On April 2, 1913, the Commission had prescribed new schedules of rates for both the Cataract company and the Buffalo company. The effect of these orders* was to reduce the rates of the Cataract company (except the rates charged to International Railway Company) about 28 per cent. and to reduce the rates of the Buffalo company about 25 per cent. The Buffalo company subsequently secured a modification of the order requiring a reduction of its rates by which modification it was permitted to charge rates somewhat higher than those fixed by the first order.

The rate charged by the Cataract company for service to the International Railway Company had not been reduced because, as this rate was covered by a contract and as the International company had not complained of

*See Commission Leaflet No. 18, pp. 1015 and 1094.

the rate and was not a party to the proceeding, the Commission was in doubt as to its right to interfere. Subsequently the International company began a proceeding to review the order of the Commission for the purpose of obtaining a determination that it was entitled to receive the benefit of the reduction in rates, and the Cataract company also began a proceeding to review said order of the Commission.

While these proceedings were pending, the Cataract company petitioned for a modification of the order so as to make the reduction of its rates 19 per cent. applicable to all its customers, including the International company, and the Buffalo company petitioned that the order of April 2, 1913, should be put into effect as to it and the subsequent order modified to that effect. These petitions of the companies were made contingent upon the consent of the Commission being given to a proposed consolidation of the Cataract and Buffalo companies, in which event the revised rates were to go into effect immediately and all pending litigation over the rates was to be dismissed. The mayor and common council of Buffalo approved the proposed modification of rates and the consolidation of the companies.

Held: That there could be no objection to the application of the Buffalo company for the putting in force of the order of April 2, 1913;

That there is no valid objection to the granting of the request of the Cataract company, in view of the fact that the International Railway Company has joined in the application of the Cataract company asking for a modification of the order of April 2, 1913, so as to provide for a 19 per cent. reduction applicable to all customers, and in view of the further fact that a 20 per cent. reduction to all customers is substantially the same as the 28 per cent. reduction to all customers except the International Railway Company;

That the Cataract company instead of putting in force a 19 per cent. reduction should put in force a simplified rate schedule which will enable it to deal with all its customers alike and at the same time result in a 19 per cent. reduction in its revenues in the city of Buffalo.

APPEARANCES:

Kenefick, Cooke, Mitchell and Bass, by *Mr. Kenefick*, Marine Bank Building, Buffalo, New York, for The Cataract Power and Conduit Company.

Norton, Penney, Spring and Moore, by *Mr. Penney*, Ellicott Square, Buffalo, New York, for the International Railway Company.

H. D. Sanders, assistant corporation counsel, for the city of Buffalo.

Henry W. Killeen, 420 Ellicott Square, Buffalo, New York, in person.

Shire and Jellinek, by *Mr. Cole*, Prudential Building, Buffalo, New York, for George J. Meyer and certain other taxpayers of Buffalo.

OPINION.

CARR, *Commissioner*:

In the year 1911 the mayor of the city of Buffalo, Hon. Louis P. Fuhrmann, entered a complaint against the rates of The Cataract Power and Conduit Company, pursuant to the provisions of Section 71 of the Public Service Commissions Law. At the same time he made a similar complaint against the Buffalo General Electric Company. These complaints were gone into most exhaustively by the Commission, and as a result it made two orders * on April 2, 1913, fixing new rates in the city of Buffalo for each company. The conclusions of the Commission are set forth at length in P. S. C. Reports, Second District, Volume III, pp. 656 to 816 inclusive.

The reduction determined upon in the case of the Cataract company was 28 per cent. from the rates existing at the time the complaint was made, and approximately 25 per cent. in the rates of the Buffalo General Electric Company as they then existed.

The Buffalo General Electric Company obtained a modification of the order of April 2, 1913, requiring the reduction in its rates so that it might be protected upon the happening of certain events and permitting it to charge somewhat higher rates than those fixed by that order. The amendatory order † was made on June 18, 1913. No amendment has ever been made by the Commission of the April 2, 1913, order fixing the rates for the Cataract company. In the Cataract case, the order of the Commission providing for a 28 per cent. reduction in rates made an exception of the International Railway Company, the largest customer of the Cataract company, which was being supplied

*See Commission Leaflet No. 18, pp. 1015 and 1094.

†See Commission Leaflet No. 19, p. 280.

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with electric energy under a contract which does not expire until the year 1932.

The position of the Commission was that inasmuch as the contract had many years to run, and the International Railway Company was not a party to the proceeding and had not complained of the rate paid by it, that it was doubtful if the Commission had any right to interfere with that rate, the question of discrimination not being before the Commission. Subsequent to the making of that order, however, the International Railway Company began a proceeding to review the order of the Commission for the purpose of obtaining a determination that it was entitled to receive the benefit of the reduction in rates. The Cataract company also began a proceeding to review the order of the Commission fixing its rates, and both of these proceedings were pending at the time the Cataract company and the Buffalo company presented their petitions to the Commission in April of the present year. The Cataract company in its petition asked for a modification of the order of April 2, 1913, so as to make the reduction in its rates 19 per cent. applicable to all of its customers, including the International Railway Company; and the Buffalo company in its petition asked that the April 2, 1913, order should be put into effect as to it, and the order of June 18, 1913, modified to that extent. These requests of the companies, however, were made contingent upon the consent of the Commission being given to the proposed merger or consolidation of the companies, in which event the revised rates would go into effect immediately thereafter and all litigation over the rates fixed by the Commission would be dismissed and the matter settled so far as the present proceedings are concerned. The mayor and common council of the city of Buffalo have given approval to the proposed modification of rates and the merger or consolidation of the companies. Under the amended order of the Commission made at the request of the Buffalo General Electric Company, it has collected certain moneys from its customers which now aggregate a large sum and which will be refunded to them if matters are brought to a conclusion

as proposed. The same is true of the Cataract company, only the amount which is to be paid back to its customers is far in excess of the amount which will be received by the customers of the Buffalo General Electric Company. If the prayers of the petitioners are granted and the rate orders modified, all the troublesome questions which might be raised if the litigation should be continued will be disposed of and the ruling of the Commission will be accepted and complied with by the companies. There can of course be no objection on the part of anyone to the application of the Buffalo General Electric Company for the putting in force of the order of April 2, 1913, fixing rates for it in the city of Buffalo. On the other hand, there would seem to be no valid objection to the granting of the request of the Cataract company, in view of the fact that the International Railway Company has now become a party to the proceeding and has joined in the application of the Cataract company asking for a modification of the order of April 2, 1913, fixing the Cataract rates so as to provide that the reduction of rates should be 19 per cent. instead of 28 per cent. A 20 per cent. reduction in rates for all the customers of the Cataract company produces substantially the same reduction in its operating revenue as a 28 per cent. reduction to all its customers excepting the International Railway Company. As a matter of equity, there would seem to be no good reason why the International Railway Company, the largest customer of the Cataract company, should pay more for the service which it receives than other customers of the Cataract company; and any question which may have existed at the time the April 2, 1913, order was made as to the right of the Commission to make the rate applicable to the Railway company is disposed of now that it comes before the Commission in this proceeding and asks that it be given the benefit of the reduction notwithstanding the provisions of its contract with the Cataract company.

When the order of the Commission fixing the Cataract rates was made on April 2, 1913, it was apparent that the

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schedule of rates was not all that could be desired, and a further study made by the Commission since that time has satisfied it that the rate schedule of the company could be considerably improved, and at the same time accomplish substantially the same reduction in the revenue of the company as originally contemplated when the April, 1913, order was made. As to the rates of the company now existing, there are certain discriminations which are bound to arise due to the so called "step rate". It is believed that the Cataract company can very properly establish a rate schedule which would be much better than the rate schedule which would result by a 19 per cent. reduction from the rates in existence at the time the April 2, 1913, order was made, and that such new schedule would eliminate the possibility of discrimination between the customers of the Cataract company. Such a new rate schedule would also provide for certain reductions which it is stated the company has been requested to make by a great many of its power users who would be favorably affected.

It is our belief that the Cataract company should at once take the necessary steps to put in force a simplified rate schedule which will enable it to deal with all its customers alike, and at the same time result in a 19 per cent. reduction in its revenues in the city of Buffalo.

The purpose of this memorandum is to show the steps leading up to the modifications of the orders of the Commission heretofore made in these matters and so there may be no misunderstanding of the motives governing the action of the Commission. If it were not thought that it would be far better for the interests of all concerned to dispose of these matters in this way, it is needless to say this action would not have been taken.

IN THE MATTER OF THE APPLICATION OF THE BUFFALO GENERAL ELECTRIC COMPANY FOR AUTHORITY UNDER SECTION 70 TO ACQUIRE THE STOCK OF THE CATARACT POWER AND CONDUIT COMPANY; UNDER SECTION 69 TO ISSUE ITS STOCK OR BONDS IN PAYMENT THEREFOR AND TO GUARANTEE THE PAYMENT OF THE BONDS ISSUED BY SAID THE CATARACT POWER AND CONDUIT COMPANY; UNDER SECTION 61, SUB-DIVISION 3, OF THE TRANSPORTATION CORPORATIONS LAW AND SECTION 15 OF THE STOCK CORPORATIONS LAW, TO MERGE, OR UNDER SECTION 7 OF THE PUBLIC SERVICE CORPORATIONS LAW TO CONSOLIDATE, WITH THE CATARACT POWER AND CONDUIT COMPANY; AND UNDER SECTION 68 OF THE PUBLIC SERVICE COMMISSIONS LAW FOR PERMISSION AND APPROVAL TO OPERATE THE COMBINED PROPERTIES OF THE TWO COMPANIES UNDER THE FRANCHISE OF THE BUFFALO GENERAL ELECTRIC COMPANY AS AMENDED BY THE RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF BUFFALO.

Case No. 4911 — Opinion No. 220.

Decided June 24, 1915.

Consolidation of Wholesale and Retail Electric Companies Authorized.

Applicant sought authority to (a) acquire and hold the outstanding capital stock of The Cataract Power and Conduit Company; (b) to issue stock and bonds for the purpose of acquiring the Cataract company's stock; (c) to guarantee the payment of the outstanding first mortgage bonds of the Cataract company; (d) for consent to merge or consolidate the applicant and the Cataract company; and (e) for permission to operate the combined properties under the franchise of the Buffalo General Electric Company in accordance with the provisions of a resolution of the common council of the city of Buffalo.

The Cataract Power and Conduit Company filed a separate petition joining in the application of the Buffalo company.

The Buffalo company, in order to effect the merger, had negotiated for more than two-thirds of the stock of the Cataract company at a price of not less than \$140 nor more than \$145 per share, dependent on the net value of the liquid assets of the Cataract company as they existed December 1, 1913.

The Cataract company purchases electrical energy from The Niagara Falls Power Company and sells it at wholesale in Buffalo. The Buffalo

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company in turn sells electrical energy which it purchases from the Cataract company at retail as distinguished from wholesale. The Cataract company sells a large amount of its power to the Buffalo company and in many respects it might properly be considered a middleman in the sale and distribution of electrical energy generated by The Niagara Falls Power Company and sold in the city of Buffalo.

Held: That it would undoubtedly be better for all concerned, the public as well as the utilities, if there should be one company distributing electrical energy in Buffalo, and particularly if the profits of the middleman were wiped out and the public was permitted to participate in the benefits thus obtained;

That the merger should be authorized on the terms prescribed by the Commission.

APPEARANCES:

Kenefick, Cooke, Mitchell and Bass, by *Mr. Kenefick*, Marine Bank Building, Buffalo, New York, for the petitioner.

Norton, Penney, Spring and Moore, by *Mr. Penney*, Ellicott Square, Buffalo, New York, for International Railway Company.

H. D. Sanders, assistant corporation counsel, for the city of Buffalo.

Henry W. Killeen, 420 Ellicott Square, Buffalo, New York, in person.

Shire and Jellinek, by *Mr. Cole*, Prudential Building, Buffalo, New York, for George J. Meyer and certain other taxpayers of Buffalo.

Clark H. Hammond, Prudential Building, Buffalo, New York, for stockholders of Buffalo General Electric Company and The Cataract Power and Conduit Company.

William Burnett Wright, Jr., 36 Church Street, Buffalo, New York, for Central Council Business Men's and Taxpayers' Association.

Frank C. Perkins, Erie County Bank Building, Buffalo, New York, as a member of the Committee from the Main Street Business Men's Association, the Connecticut Street Business Men's Association, and Central Council Business Men's and Taxpayers' Association.

CARR, *Commissioner*:

This is an application of the Buffalo General Electric Company for permission to do the following things:

(a) To acquire, purchase, and hold the outstanding capital stock of The Cataract Power and Conduit Company;

(b) To issue certain bonds and stock for the purpose of acquiring the capital stock of the Cataract company;

(c) To guarantee the payment of the outstanding first mortgage bonds of The Cataract Power and Conduit Company dated January 1, 1897, aggregating \$1,384,000;

(d) For consent to merge or consolidate the Buffalo General Electric Company and The Cataract Power and Conduit Company;

(e) For permission to operate the combined properties under the franchise of the Buffalo General Electric Company in accordance with the provisions of a resolution of the common council of the city of Buffalo adopted on January 20-25, 1915.

The Cataract Power and Conduit Company has filed a separate petition joining in the application of the Buffalo General Electric Company hereinbefore referred to. A hearing on the matter was duly held in the city of Buffalo on May 24, 1915, at which time the companies, including the International Railway Company, the city of Buffalo, and other customers of the companies in the city of Buffalo and citizens of that city, were represented in person and by counsel.

On the hearing there was some opposition to the proposed merger or consolidation on the ground that the interests of the city had not been properly protected. Under the provisions of the franchise under which the Cataract company is operating, it had no authority to transfer or assign the franchise or to consolidate or merge with any other corporation without the consent of the common council of the city of Buffalo. This franchise was to run for thirty-six years from the date of its acceptance by the company to which it was issued, to-wit: The Niagara Falls Power Company, and

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it was accepted by that company on January 14, 1896. This was thoroughly discussed in the rate case,* P. S. C., Second District, Reports, Volume III, p. 656.

The petition sets forth that the Buffalo General Electric Company has for some time been negotiating for the purchase of the stock of The Cataract Power and Conduit Company so as to effect a merger or consolidation of the two companies, and that options have been secured for the purchase of more than two-thirds of the stock at a price of not less than \$140 nor more than \$145 per share, dependent upon the net value of the liquid assets of the Cataract company as the same existed on December 1, 1913, and at that time the liquid assets amounted to approximately \$41 per share on the capital stock of the Cataract company authorized and outstanding. Incidental to this merger application, these two companies have filed petitions in case No. 2590,† seeking certain modifications of the orders made by this Commission in the rate case under date of April 2, 1913, and June 18, 1913. A careful investigation of the franchise situation as regards the Cataract company would seem to indicate that all of the rights of the city under that franchise have been thoroughly protected and safeguarded in the modifications which have been made by the resolution of the common council hereinbefore referred to authorizing the merger or consolidation of the companies, so that it is apparent to the Commission that the city has not been placed at any disadvantage in case the merger should be permitted. We say this advisedly, because of the statements which were made on the hearing that the city officials of the city of Buffalo had signally failed in their duty to safeguard the interests of the city in all the negotiations which had extended for nearly a year between the city and the companies looking to the adjustment of the rate situation in the city of Buffalo.

The situation of these two corporations in the city of

*See Commission Leaflet No. 18, pp. 1015 and 1094.

†See Commission Leaflet No. 45, p. 1020.

Buffalo, while set forth at great length in the rate cases, may be again referred to briefly in this opinion. The electric energy which is used by these companies in the city of Buffalo is obtained from The Niagara Falls Power Company. At the time the rate cases were pending The Cataract Power and Conduit Company sold, and at the present time it sells, electric energy at wholesale, obtained from The Niagara Falls Power Company, in the city of Buffalo; and the Buffalo General Electric Company in turn sells electric energy which it purchases from the Cataract company, at retail in said city. In some instances the former company also does some business which might properly belong to the Buffalo General Electric Company when considering the sale of energy at retail as distinguished from wholesale. The Cataract company sells a large amount of its power to the Buffalo company, and in many respects it might properly be considered as the middleman in the sale and distribution of the electric energy generated by The Niagara Falls Power Company and sold in the city of Buffalo. As was stated in the opinion* of this Commission in the *Canadian-American Power cases* [Opinion No. 169, p 9]: "The Cataract Power and Conduit Company has no true economic place in Buffalo. The Buffalo General Electric Company or some other corporation should be the sole distributing company. The Niagara Falls Power Company, both Canadian and American, should sell power to that company at the lowest price consistent with expenses, investment and maintenance." There is no reason why the business in the city of Buffalo can not be handled as well by one company as two; and in fact it is the general experience that in situations of this sort it is undoubtedly better for all concerned, the public as well as the companies, if there is but one concern distributing electric energy in the community. Particularly is this true if the profits of the middleman are wiped out and the public is permitted to participate in the benefits thus obtained. While it is true that the

*See Commission Leaflet No. 29, p. 1106.

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two companies in question do not at the present time compete with each other to any extent, yet it may readily be imagined that a situation might arise whereby there would be severe competition between them which might create serious difficulties.

If the plan proposed is approved by this Commission, the Buffalo company will only issue new securities of equal par value to the \$2,000,000 par value of the common stock of The Cataract Power and Conduit Company now outstanding. No additional bonds of the Cataract company will be issued, so that no increase in the outstanding securities of the companies will be made for the specific purpose of merging or consolidating the companies. The excess amount which the Buffalo company is required to pay to acquire the Cataract stock will be provided by the Buffalo company without issuing additional securities for that specific purpose. While the petitioner asks for the right to pay as much as \$145 a share for the stock of the Cataract company, plus interest at 6 per cent. from December 1, 1913, yet in view of the fact that the liquid assets of the Cataract company are only about \$41.00 per share, the Buffalo company should be limited to a purchase price of \$141 per share for all of the stock of the Cataract company. On this basis the Buffalo company would issue for the \$1,005,000 of stock of the Cataract company held by The Niagara Falls Power Company, an equivalent amount of the first refunding 5 per cent. gold bonds of the Buffalo company dated April 1, 1909, and would pay the balance of \$41.00 per share plus interest on the purchase price in cash. Likewise, for the remaining outstanding stock of the Cataract company, the Buffalo company would issue similar bonds at par for a like amount of stock of the Cataract company; or if the holders of the stock of the Cataract company prefer so to do, they may accept common stock of the Buffalo company par for par, the balance of \$41.00 per share with interest on the purchase price from December 1, 1913, to be paid in cash. The Cataract company has outstanding \$1,384,000 of bonds, and the Buffalo company asks

permission to guarantee the payment of the principal and interest of these bonds. Inasmuch as it may be assumed that the mortgage securing these bonds is a valid lien on the property of the Cataract company, which property is to be acquired by the Buffalo company subject to this mortgage, if the plan proposed is made effective there would seem to be no reason why the permission of the Commission should not be given to the Buffalo company to make this guarantee. The papers also show that a new power contract will be entered into with The Niagara Falls Power Company which will put the company formed by the merger in as good a position in respect to the purchase of power as the Cataract company now occupies, and this is undoubtedly of value to the companies.

Another ground of opposition at the hearing was the fact that the Buffalo company proposes to issue its securities in payment for the stock of the Cataract company; that this ought not to be done because the Commission had decided in the Cataract rate case that none of the stock had been issued for cash or an equivalent in property. There was no dispute as to this fact, and the books of the Cataract company clearly showed it. Notwithstanding this, it was strongly contended by the Cataract company that the rights obtained by the issuance of this stock did have a substantial value. However, the situation now presented is such that the Commission may properly require the companies, if this merger or consolidation is to become effective, to write off a substantial portion of the intangible value which represents the stock; and in the opinion of the Commission this can be accomplished to a very large extent by requiring as one of the conditions of the merger that this intangible value should be written off to the extent of \$1,384,000, which is the amount of the par value of the bonds of the Cataract company now outstanding; and the order will so provide. If this is done, then all of the objection against the merger or consolidation which has been presented would seem to have been properly disposed of. The Commission, after having given careful consideration to all of the matters

which have been presented to it for consideration in this case, is of the opinion that the petition of the Buffalo General Electric Company should be granted, as well as the petition of the Cataract company, and an order entered to that effect; and in the order the various conditions and restrictions set forth in this opinion should be properly covered.

IN THE MATTER OF THE APPLICATION OF THE ULSTER AND DELAWARE RAILROAD COMPANY UNDER SECTION 49 OF THE PUBLIC SERVICE COMMISSIONS LAW FOR APPROVAL OF AN INCREASE OF ITS MILEAGE BOOK RATE.

Case No. 4873—Opinion No. 221.

Decided July 6, 1915.

Commission without Jurisdiction to Authorize Increase in Mileage Rates Above the Rate Fixed by the " Mileage Book Law."

Held: That the Commission has no power to grant permission to the applicant to increase its mileage book rates from 2 cents per mile to 3 cents per mile, since the " Mileage Book Law " expressly fixes 2 cents per mile as a maximum rate to be charged for mileage books by companies in the possession of the applicant.

Commissioners Carr and Emmet filed dissenting opinions in which they maintain that the Commission did have power to increase mileage book rates in excess of the maximum fixed by the " Mileage Book Law."

OPINION.

VAN SANTVOORD, *Chairman*:

This is an application of The Ulster and Delaware Railroad Company for leave to increase its mileage book rates from 2 cents per mile to 3 cents per mile, upon the ground that its returns for passenger service rendered are inadequate, and that the cost of transportation per passenger mile is in excess of its present mileage book rate, and that passengers using mileage tickets are accordingly being carried at a loss to the railroad company.

The Ulster and Delaware Railroad Company was organized in 1901 by consolidation of previously incorporated

railroad corporations, its lines are more than one hundred miles in length, it is allowed by law to charge a maximum fare of not to exceed 3 cents per mile and does charge more than 2 cents per mile. Within the terms of the decision in *Purdy v. Erie Railroad Company*, 162 N. Y. 42, the petitioner is accordingly subject to the requirements of Section 60 of the Railroad Law (Chapter 49 of the Consolidated Laws, Section 60), commonly known as the " Mileage Book Law ", and which reads as follows:

Issue and use of mileage books. Every railroad corporation operating a railroad in the State, the line or lines of which are more than one hundred miles in length, and which is authorized by law to charge a maximum fare of more than 2 cents per mile, and not more than 3 cents per mile, and which does charge a maximum fare of more than 2 cents per mile, shall issue mileage books having either five hundred or one thousand coupons attached thereto, entitling the holder thereof, upon complying with the conditions hereof, to travel either five hundred or one thousand miles on the line or lines of such railroad, for which the corporation may charge a sum not to exceed 2 cents per mile. Such mileage books shall be kept for sale by such corporation at every ticket office of such corporation in an incorporated village or city, and any of such books shall be issued immediately upon the application therefor. Upon presentation of such mileage book to a conductor on any train, on the line of railroad owned or operated by said railroad corporation, the holder thereof, or any member of his family or firm, or any salesman of his firm, shall be entitled to travel for a number of miles equal to the number of coupons detached by the conductor. Such mileage book shall entitle the holder thereof to the same rights and privileges in respect to the transportation of persons and property to which the highest class ticket issued by such corporation would entitle him. Such mileage books shall be good until all coupons attached thereto have been used. Any railroad corporation which shall refuse to issue a mileage book, as provided by this section, or in violation hereof, to accept such mileage book for transportation, shall forfeit \$50.00, to be recovered by the party to whom such refusal is made: but no action can be maintained therefor unless commenced within one year after the cause of action accrues.

Authority to grant this application is predicated upon Section 49 of the Public Service Commissions Law, from which are mainly derived the powers of the Commission to fix railroad rates and service. The majority of the Commission are of the opinion that it has no power to

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grant the relief prayed for, because of the express requirements of Section 60 of the Railroad Law which section we find has never been repealed, expressly or by implication, and to modify, suspend or disregard which it is without authority. In arriving at this determination we have not overlooked Section 127 of the Public Service Commissions Law, which provides that "All other acts and parts of acts otherwise in conflict with this act are hereby repealed". The "Mileage Book Law", as will become manifest in the ensuing discussion, no more conflicts with the Public Service Commissions Law than does the law prescribing the maximum rates for common carriers, the "Eighty Cent Gas Law" for New York City, and various other statutory requirements, approval of any violation of which, as will be hereafter pointed out, are especially excluded from those general supervisory powers with which the Commission has been invested.

It will be conceded that standing by itself, Section 57 of the Railroad Law fixes at 3 cents per mile the maximum rate of fare allowed in this State for transportation of a passenger by any railroad corporation whose lines exceed one hundred miles in length; and, similarly, that standing by itself, the so-called "Mileage Book Law" (Section 60 of the Railroad Law) compels every such corporation which may charge up to 3 cents per mile, and actually charges over 2 cents per mile, to issue mileage books at not to exceed 2 cents per mile. It is now proposed to allow the Ulster and Delaware company, which admittedly is subject to the requirements of the statutes quoted, to issue mileage books at 3 cents per mile, because of its necessities in respect of that reasonable average return, etc. to which it is entitled under the law. In other words, the petitioner, which, since its organization in 1901, has, in compliance with law, issued its mileage books, being a form of *reduced fare ticket*, at the rate of 2 cents per mile, which is the maximum legal rate for such mileage, now asks leave to issue such mileage books at the rate of 3 cents per mile, being the maximum rate of fare which is permitted by law to charge for any form of ticket.

The " Mileage Book Law " was enacted in 1895. It was not repealed when the Public Service Commissions Law was enacted. On the contrary, when under Chapter 480 of the Laws of 1910, the Public Service Commissions Law was re-enacted as Chapter 48 of the Consolidated Laws, the " Mileage Book Law " was re-enacted in its then precise form in Chapter 481 of the Laws of 1910, known as Chapter 49 of the Consolidated Laws. It has thus not only never been expressly repealed, but having been re-enacted under numerically later chapters of the Laws of 1910 and of the Consolidated Laws, respectively, than the corresponding chapter enumeration of the re-enacted Public Service Commissions Law in that year, the difficulties of any argument that it has been repealed by implication are intensified. Let us assume, as I think we must, that no such repeal has even been made or intended. But if the present application is granted, as far as the petitioner and its patrons are concerned, the " Mileage Book Law " will be practically repealed by this Commission—in all respects, at least, except the naked privilege of purchasing that particular form of ticket at the identical rate charged for a ticket in the ordinary form. There can be no doubt that the right to buy a mileage book containing five hundred or one thousand coupons, at precisely the same rate charged for an ordinary ticket, and thus to pay in advance for more transportation than one requires at the time, is at best only a theoretical privilege; so that to grant the present application would actually amount to a repeal of the law by this Commission. Such authority is quite beyond its power. The repeal of a statute is a legislative act, quite as much as the determination of its constitutionality is a judicial one. The legislature has never been chary about passing laws. After twenty successive legislatures have failed to embrace their respective opportunities to repeal the " Mileage Book Law ", which in the meantime has been on several occasions either expressly re-enacted or impliedly approved, I think we may fairly consider that the law-making power of this State has intended this mile-

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age book requirement to stand, rather than assume that the legislature has by implication delegated to the Public Service Commission authority to repeal it.

Here, then, we have a mandatory statute which has been upon the books for a generation. Its obvious intent is to afford the traveling public an absolute right to purchase mileage books at not to exceed 2 cents per mile from any railroad corporation in this State whose lines exceed one hundred miles in length, provided such railroad is authorized by law to charge at the rate of 3 cents per mile as a maximum, and actually does charge more than 2 cents per mile for its ordinary tickets. This requirement became a law twelve years before the Public Service Commission was created, and, three years after the latter event, during a general codification of the statutes, it was expressly re-enacted. The legislature has never repealed it, has never manifested intent to repeal it, has never authorized the Public Service Commission to repeal it. Its language is clear and explicit, and its requirement that mileage books at not to exceed a specific price shall be sold by certain railroads, of which the court of last resort has decided that this petitioner is one (*Parish v. Ulster and Delaware Railroad Company*, 192 N. Y. 353), is absolutely without qualification or reserve. In the teeth of these facts which have remained unchallenged for twenty years, this Commission is now asked to legalize the sale of a mileage form of "reduced fare" ticket at the maximum rate allowed by law for the ordinary form of ticket. Any such authority in the Commission must be found, if at all, in other statutory provisions which either expressly or by plain implication empower the Commission to either disregard Section 60 of the Railroad Law or for the time being suspend its operation.

I am aware of only three provisions of the Public Service Commissions Law upon which legislative intent as to this question may be predicated. These provisions are found in Sections 26, 33 and 49 of that law.

Section 26 of the Public Service Commissions Law, which

relates generally to “just and reasonable charges for transportation of persons and property”, provides that,

“All charges made or demanded by any such corporation, person or common carrier for the transportation of passengers or property or for any service rendered or to be rendered in connection therewith, as defined in Section 2 of this chapter, shall be just and reasonable and not more than allowed by law or by order of the Commission having jurisdiction and made as authorized by this chapter. Every unjust or unreasonable charge made or demanded for any such service or transportation of passengers or property or in connection therewith or in excess of that allowed by law or by order of the Commission is prohibited.”

Surely no stress can be laid upon this language as indicative of any intent by the legislature that this Commission shall have power to disregard, modify or suspend the operation of an express statutory requirement which goes contrary to the Commission's idea of just and reasonable rates. Section 26 is in fact only a declaration that the rates for transportation in the State shall be just, reasonable and lawful. If considered at all in the present discussion, it should be regarded as making against, rather than for the proposition that the Commission has power in the premises. It expressly forbids any charge for transportation in excess of that allowed by law, and it is properly to be construed as forbidding also any charge for transportation in excess of such *lesser* rate than the maximum allowed by law in case such lesser rate shall have been fixed by order of the Commission. This is precisely the situation contemplated by Section 49, hereafter considered, which authorizes the Commission, under certain circumstances, to fix the maximum rates to be charged for transportation of persons or property “notwithstanding that a *higher* rate, fare or charge has been heretofore authorized by statute.”

While Subdivision 4 of Section 33 seems to be mainly relied upon as authorizing the Commission to allow an increase in mileage book rates over the statutory maximum fixed by Section 60 of the Railroad Law, I believe such deduction is unwarranted by the ordinary rules of statu-

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tory construction. After prohibiting transportation by common carriers until publication of their respective rate schedules, providing that only rates fixed shall be charged, prohibiting passes and making elaborate provisions in regard to free carriage and reduced rates in exceptional cases, Section 33 concludes with Subdivision 4, which reads as follows:

“Nothing in this section or in any other provision of law shall be deemed to limit the power of the Commission to require the sale of, and upon investigation, prescribe reasonable and just fares as the maximum to be charged for, commutation, school or family commutation, mileage tickets over railroads or street railroads, joint interchangeable mileage tickets, round trip excursion tickets, or any other form of reduced rate passenger tickets over such railroads or street railroads; *Provided*, That all special round trip excursion tickets, the sale of which is limited to less than thirty days, except round trip excursion tickets to the State Fair and return during the holding thereof, shall be deemed exempt from such regulation by the Commission.”

A careful reading of the entire section in the form of its original inclusion in the Public Service Commissions Law, and as thereafter variously amended, leads to the inevitable conclusion that Subdivision 4 is simply a “saving clause” to certain distinct statutory provisions and requirements entirely dissociated from the question at issue, such saving clause having been inserted without the slightest intent on the part of the legislature of thereby and in itself enlarging or even defining the powers of the Commission elsewhere created and specifically prescribed. But even if Subdivision 4 could be properly considered as reflecting such legislative intent, the utmost that could reasonably be urged in that respect is that the paragraph recognizes the right of the Commission to fix the rates which may be charged for any form of *reduced rate passenger ticket*, such rates, however, to be confined “within lawful limits”, to quote the language of the statute upon an analogous subject (*Fixing Rates for Gas and Electricity*, Section 72 of Public Service Commissions Law). Mileage books at 2 cents per mile, or *less*, are “a form of reduced

rate passenger ticket" when the issuing corporation charges more than at the rate of 2 cents per mile for its every-day form of tickets; but mileage books at the *maximum rate* permitted by law would be a "reduced rate" ticket in form only, and a most shadowy form at that. The average individual would certainly find in such a "reduced rate" ticket rather more form than substance. The fact that the legislature never contemplated the compulsory sale of mileage books except at reduced rate is manifest in that the statute requires the sale of such books *only* in case the railroad charges for its maximum fare *more than 2 cents*.

This brings us to a consideration of Section 49 of the Public Service Commissions Law, where, if at all, and fortified as may be by argument based upon the general intent of that law, may be found authority for the broad proposition that a department created by legislative act may at its discretion annul the positive requirements of another legislative act, in existence at the time of the creation of such department and then and thereafter unrepealed.

The first paragraph of Subdivision 1 of Section 49 reads as follows:

1. Whenever either Commission shall be of opinion, after a hearing had upon its own motion or upon a complaint, that the *rates, fares or charges demanded, exacted, charged or collected* by any common carrier, railroad corporation or street railroad corporation subject to its jurisdiction for the transportation of persons or property within the State, or that the regulations or practices of such common carrier, railroad corporation or street railroad corporation affecting such rates are unjust, unreasonable, unjustly discriminatory or unduly preferential, or in any wise in *violation of any provision of law*, or that the maximum rates, fares or charges, *chargeable* by any such common carrier, railroad or street railroad corporation are insufficient to yield reasonable compensation for the service rendered, and are unjust and unreasonable, the Commission shall with due regard among other things to a reasonable average return upon the value of the property actually used in the public service and to the necessity of making reservation out of income for surplus and contingencies, determine the just and reasonable rates, fares and charges to be thereafter observed and in force as the maximum to be charged for the service to be performed, notwithstanding that a *higher rate, fare or charge* has been heretofore authorized by statute, and shall fix the same by order to be served

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upon all common carriers, railroad corporations or street railroad corporations by whom such rates, fares and charges are thereafter to be observed."

And so much of the second paragraph of said Subdivision 1 as may be considered germane to the precise point involved reads as follows:

"Whenever either Commission shall be of the opinion, after a hearing had upon its own motion, or upon complaint, that the *rates, fares or charges demanded, exacted, charged or collected* by any common carrier, railroad corporation or street railroad corporation subject to its jurisdiction for excursion, school or family commutation, commutation passenger tickets, half-fare tickets for the transportation of children under six years of age, or any other form of reduced rate tickets for the transportation of persons within the State, or joint interchangeable mileage tickets, with special privileges as to the amount of free baggage that may be carried under mileage tickets of one thousand miles or more within the State, or that the regulations or practices of such common carrier, railroad corporation or street railroad corporation affecting such rates are unjust, unreasonable, unjustly discriminatory or unduly preferential, *or in any wise in violation of any provision of law*, or that the maximum rates, fares or charges collected or *charged* for any of such forms of reduced fare passenger transportation tickets by any such common carrier, railroad or street railroad corporation are insufficient to yield reasonable compensation for the service rendered, and are unjust and unreasonable, * * * the Commission shall, with due regard, among others to a reasonable average return upon the value of the property actually used in the public service and to the necessity of making reservation out of income for surplus and contingencies, determine the just and reasonable rates, fares and charges to be hereafter observed and enforced as the maximum to be charged for such mileage, excursion, school or family commutation, commutation, half-fare or any other form of reduced rate ticket for the transportation of persons, or joint interchangeable mileage tickets with special privileges as aforesaid."

In these two paragraphs are to be found all the power which the legislature has in express terms conferred upon the Commission to fix the rates of and the maximum to be charged by carriers for all sorts of tickets for transportation of persons within this State. Precisely what has been said, then, in defining this power? According to the language used whenever the Commission is of the opinion

that the rates charged for transportation by any common carrier, or the regulation or practices of such carrier affecting such rates are unjust, unduly preferential or discriminatory, *or in anywise in violation of law*, or that the maximum rates chargeable by such carrier are insufficient to yield a reasonable compensation for the service rendered, the Commission shall, with due regard to a reasonable average return etc. determine the maximum rates to be thereafter in force. But the sale of mileage at more than 2 cents per mile by a carrier circumstanced as is the petitioner, would be in direct "violation of law," namely, of the "Mileage Book Law" above quoted. How then in view of the language used can it be contended that the legislature intended to empower the Commission to do anything more than to fix rates *within the established legal maximum*? And if there is any doubt on the subject is it not dispelled by the qualifying words, that such maximum may be fixed "notwithstanding that a *higher* rate or charge has been heretofore authorized by statute?" If the legislature intended that the Commission might permit a rate to be raised above the maximum provided by law, and in formulating such power considered it necessary to use an explanatory clause, why did it not use the comprehensive phrase "notwithstanding a *different* rate" had heretofore been authorized by statute? In short, if the intention was to clothe the Commission with absolute discretion in fixing railroad rates, without regard to existing statutory maximums, why all this pains to explain that *lesser* rates than such maximum might be compelled while leaving it unsaid that rates *higher* than such maximum might similarly be fixed?

So far, therefore, as may be gathered from the express wording of the statute, in a search for the alleged authority of the Commission to permit the sale of mileage books by the applicant carrier at 3 cents per mile, we must as a last resort look to the second paragraph of subdivision 1 of Section 49 above quoted. The first paragraph of that subdivision having defined the Commission's powers to fix

carrier's rates generally, the second paragraph particularizes as to all forms of reduced rate tickets. Carefull comparison of the two paragraphs discloses that the wording in respect of such reduced rates tickets is practically identical with that used in the former paragraph in reference to fares generally, the words " in violation of law " appearing in both paragraphs in precisely the same relation. It is true that the explanatory clause in the first paragraph (" notwithstanding that a higher rate " etc.) is not found in the second paragraph. But that fact is quite inconsequential; having been used in qualification of the general power and with the effect stated above, no contrary inference may properly be drawn from its non-appearance in the particular and lesser proposition. And as already stated the use of the words " or in anywise in violation of law," without any other qualification or explanation, leads inevitably to the conclusion that the authority intended to be delegated is restricted to fixing rates *within the established legal maximums*. In cases where the charged rates prove to be inadequate, unjust or otherwise improper, the Commission may allow an increase, but not beyond the limit fixed by statute as a maximum; and " notwithstanding " the fact that the carrier is authorized by such statute to charge up to the prescribed maximum, it is nevertheless to be bound by the determination of the Commission for a lesser rate.

This, to our mind, is the obvious intent of the statute, and it is to be particularly observed that this conclusion does *not* as has been urged, limit the rates making functions of the Commission to *reducing* rates. The power of the Commission to approve an increase in rates, as well as to order a decrease, is unquestioned; but any such increase may not be in excess of the limit clearly defined by law as a maximum, in the particular case. Thus a carrier like the petitioner, which has been charging 1½ cents for mileage, or at the rate of 2 cents or more per mile for an ordinary ticket, may be authorized to increase such rates respectively to 2 cents and 3 cents per mile. In support of the

foregoing conclusion we are fortunately not without abundant evidence outside of that found in the precise terms of the provisions of the Public Service Commissions Law thus far under review. Thus the maximum rate of 3 cents per mile prescribed by Section 57 of the Railroad Law for such carriers as the petitioner is made expressly and in terms "subject to the provisions of the Public Service Commissions Law." While no one has thus far ventured to claim that these words of limitation imply power in the Commission to permit a carrier to increase its general rates above the maximum fixed by Section 57, for example to allow the petitioner corporation to charge at the rate of 5 or even 10 cents per mile for an ordinary ticket, instead of the 3 cent rate prescribed, the exercise of such a power would in its essence not differ in the slightest from that of authorizing the sale of mileage books at more than the statutory maximum therefor. But, whether as we believe, the true construction of the words "subject to the provisions of the Public Service Commissions Law," which qualify the "maximum rates" provisions of Section 57, is that the privilege to carriers of charging such maximum rates is subject to the authority of the Commission to require transportation to be furnished at *less* than such maximum rates, instead of placing these maximum rates also within the discretion of the Commission, there is to be noted the very significant fact that the "*Mileage Book Law*" contains no such qualifications. Subject to the provisions of the Public Service Commissions Law, maximum rates of fare chargeable by common carriers shall be thus and so, but *the maximum fare of mileage books shall be 2 cents per mile*—absolutely without reference to or hindrance from the Public Service Commissions Law. How are we to explain the inclusion of the qualification in the case of Section 57 and its absence in the case of Section 60? Only upon the theory that the legislature intended the Commission to have no power to repeal, modify, suspend the operation of or in any way disregard the express requirement of Section 60 that in

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certain cases the traveling public should enjoy the privilege of buying mileage books at the price of 2 cents per mile.

We recognize the force of the argument that the public ought not to enjoy a privilege of this sort when a profitable operation of the enterprise is thereby jeopardized. But is it not that, under the circumstances, purely a matter between the carriers and the legislature? As it is pointed out in the *Purdy* case, *supra*, the "Mileage Book Law" imposes no unlawful burden or undue hardship upon the carrier subject to its requirement for the reason that the latter becomes a corporation with full knowledge of this particular obligation. Acceptance of the privilege to be a corporation of course involves acceptance of obligations incidentally imposed. In the case of the applicant, which was formed by a consolidation six years before the Public Service Commissions Law was enacted, the burden of this "Mileage Book Law" became as inevitable as the payment of taxes, or as the charter restriction to a 2 cents per mile fare which was imposed upon the (old) New York Central Railroad by its acceptance of such charter. (See paragraph 2 of subdivision 5 of Section 57 of the Railroad Law).

There is still another provision of law which makes against the argument that the legislature intended to clothe the Commission with the full power to raise and lower existing rates without regard to statutory maximums. It is found in Sections 66 and 72 of the Public Service Commissions Law. Subdivision 5 of Section 66 empowers the Commission to determine and prescribe proper rates and charges for gas and electricity, "notwithstanding that a higher rate or charge has heretofore been authorized by statute" (the precise qualification to the authority conferred as to rates of common carriers); while Section 72, which prescribes the procedure in such cases declares that the Commission may "within lawful limits fix the maximum price of gas or electricity not exceeding that fixed by statute." Here then, in the case of the only other public service corporations besides common carriers which were

originally subject to the Public Service Commissions Law we find in even plainer terms the same restriction upon the rate-making power of the Commission, which in a case of increase is limited to any existing maximum created by law. Why should the Commission be accorded greater powers in transportation rate-making than in fixing rates for gas and electricity? And if there is no adequate reason for such a distinction, with the necessarily conceded absence of unlimited power in the case of rates for lighting and power, what becomes of the argument of "legislative intent" in the case of transportation rates? We say "conceded" absence of power in the case of lighting and power rates, because it would have been a bold Commission which in the face of the "Eighty Cent Gas Law" would have allowed the Consolidated Gas Company to increase its rate to more than the maximum thus fixed by statute.

The only remaining argument seems to be the appeal *ad hominem*. As stated by one of the counsel, "the Public Service Commissions Law would be idle legislation if construed to authorize the Commission to enquire and determine whether or not existing rates are too high or inadequate and with authority to reduce them if found too high but without power to increase them if considered too low." And as expressed by another, "if the Commission is vested with the power to require a railroad to sell a mileage book for less than 2 cents per mile when it finds that 2 cents per mile is unreasonable, because an excessive, charge, it ought to have the right to increase the rate above 2 cents per mile when it finds such a rate to be unreasonable, because it is too little." These considerations might fairly be addressed to the legislature in support of a proposition to repeal the "Mileage Book Law," but they have no part in an argument to establish delegated authority to disregard an express statute. To fix rates is a purely legislative function, the power to exercise which is not to be lightly assumed although actuated by whatsoever lofty motives in the rounding out of an ideal. While it is not to be denied that the legislature has power

to delegate such functions, such delegation should be in express terms, and not by implication, or at least by an implication so undeniably manifest as to be the substantial equivalent of express declaration. As for the suggestion, so gravely urged, that the Commission "ought to have the power" invoked, it might be considered as to the point if we were discussing the question of what constitutes an ideal regulative law, in the abstract. But the concrete question before us is *not* what the legislature ought to have done in formulating the Public Service Commissions Law, but what it actually has done and precisely how far it has gone in delegating certain of its law-making functions to a regulative department. In deciding that question we are not to be controlled by considerations of policy, by general propositions in ethics, or by accepted ideals in law-making. The scope and meaning of a statute of this kind, if unfortunately lacking in either the science of ideal humanity or that other kind of ethics which Kant terms "pure morals," is not to be delimited by precepts of the Sermon on the Mount. There is no rule of statutory construction which directs us to explore the labyrinth of legislative intent by the light of the Moral Law. There are even people who believe that the legislature has been known to enact laws which really "ought" not to have been made. But howsoever plain such a case may seem, it will be a sorry day for our scheme of government when a department created by the legislature shall assume to construe its statutory powers by abstract propositions of right or wrong as bearing upon a particular legislative act, rather than by the ordinary rules of law.

In arriving at our conclusions, we have not overlooked the decision of the Missouri Supreme Court in *State ex rel. v. The Public Service Commission*, 259 Mo. 704. That decision is not controlling upon this Commission and we do not accept its reasoning, although we are in accord with many of its observations as to the propriety and wisdom of entrusting the Public Service Commission unrestricted power in rate fixing. While not denying that such power

might properly be delegated to us by the legislature we decline to assume an authority which has not been assuredly created and plainly defined.

The application must be denied.

July 6, 1915.

DISSENTING OPINION.

CARR, *Commissioner*:

I am unable to concur in the views of the majority of my associates in holding that this Commission has no power to grant an increase in the mileage book rates of The Ulster and Delaware Railroad Company because of the provisions of Section 60 of the Railroad Law. If that section is controlling then I believe all of my associates are agreed that a distinct hardship will be worked upon the company.

The fact that the courts of this State have not dealt with the precise situation presented in this case prevents us from having the benefit of a judicial determination as a guide to our action. The courts of the State of Missouri, however, have dealt with a similar situation and reference will be made to it hereinafter.

The " Mileage Book Law " of this State was first enacted in 1895 (Chapter 1027, Laws of 1895). Amendments have been made from time to time and are covered by Chapter 835 of the Laws of 1896; Chapter 484 of the Laws of 1897, and Chapter 577 of the Laws of 1898.

The law as originally enacted required every railroad corporation operating a road in the State of New York, the lines of which were more than one hundred miles in length and which were authorized to charge a maximum fare of more than 2 cents per mile and not exceeding 3 cents per mile, to sell one thousand mile mileage tickets for use on such lines at a rate not exceeding 2 cents per mile. The subsequent amendments to the law set forth certain other provisions which are not material to the case.

When the Public Service Commissions Law was enacted in 1907, this " Mileage Book Law " was not repealed. When Chapter 481 of the Laws of 1910 was enacted, known

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as the Railroad Law and constituting Chapter 49 of the Consolidated Laws, this so-called " Mileage Book Law " became Section 60 of Article 3 of the Railroad Law and it was incorporated as such Section 60 in the same form in which it had existed since the enactment of Chapter 577 of the Laws of 1898. The fact that this " Mileage Book Law " was incorporated in the Railroad Law in 1910 does not mean that it is to be considered as having been enacted at that time. Chapter 596 of the Laws of 1909 provides that in such a case the act is to be considered as of the time that it was originally enacted. There was also enacted in 1910, Chapter 480 of the Laws of 1910 known as the Public Service Commissions Law and constituting Chapter 48 of the Consolidated Laws. At that time, Section 49 of Article 3 of the Public Service Commissions Law gave the Commission authority to regulate the rates of the railroads in certain respects. It was evidently not intended to give the Commission the power to increase rates under that section because of the following words which appear in subdivision 1, viz: " Notwithstanding that a higher rate, fare or charge has been heretofore authorized by statute."

In 1911, the legislature enacted Chapter 546 of the Laws of the State of New York which, among other things, amended subdivision 4 of Section 33 of Article 2 and subdivision 1 of Section 49 of Article 3 of the Public Service Commissions Law. Chapter 546 was apparently enacted for two purposes: first, to enlarge the provisions of subdivisions 3 and 4 of Section 33 so as to cover the issuance of any reduced rate passenger tickets, and second, to amend subdivision 1 of Section 49 so as to give the Commission power to determine the just and reasonable rates, fares and charges to be observed and enforced as the maximum to be charged for mileage, excursion, commutation and other forms of reduced rate tickets for the transportation of persons. Nothing was said at the time Chapter 546 was enacted as to any intent to repeal Section 60 of the Railroad Law so that to all intents and purposes, that section is still

in force and effect and apparently for a specific purpose. At first glance, it might seem as though the purpose in not repealing Section 60 was to make it controlling as to the issuance of mileage books, yet it seems to me that upon proper consideration of other statutory provisions, it will be apparent that this was not the legislative intent. While under Section 49 of the Public Service Commissions Law as it exists, there may be some question as to whether or not the Commission would have power to increase the mileage book rates provided by Section 60 of the Railroad Law, yet, when consideration is given to subdivision 4 of Section 33 of the Public Service Commissions Law, I am of the opinion that the Commission has full power and jurisdiction to increase such mileage book rates if upon investigation it should be of the opinion that such rates ought to be increased.

The "Mileage Book Law," so-called, has been repeatedly construed by the courts of this State, and most of the cases have arisen out of actions brought to recover the penalty provided by law.

Trolan v. New York Central and Hudson River Railroad, 31 A. D. 320, which was reported in June, 1898, was an action brought to recover the penalty for the refusal of the defendant to sell a mileage book to the plaintiff and the judgment for the plaintiff was affirmed. In this case, the court held that the New York Central and Hudson River Railroad Company was subject to the provisions of the "Mileage Book Law."

In February, 1898, the case of *Corcoran v. New York Central and Hudson River Railroad Company*, 25 A. D. 479, was decided and this was also an action for the penalty for refusal to accept a mileage book for transportation. The plaintiff recovered judgment which was affirmed and this decision was reported in 164 N. Y. 587.

After these cases were decided and in the year 1899, the case of *Lake Shore and Michigan Southern Railway v. Smith*, 173 U. S. 864, was decided. This arose out of an action for the penalty for the refusal of the railway com-

pany to sell a mileage book to Smith in accordance with the provisions of an act of the State of Michigan passed in 1880. This " Mileage Book Law " under which the cause of action accrued was similar to the New York act, Chapter 1027 of the Laws of 1895. The railway company was incorporated before the law went into effect, and the court held that the act was unconstitutional because it was in violation of that portion of the Constitution which forbids the taking of property without due process of law. The court also held that the act also provided for unjustifiable discrimination in favor of a few persons traveling over the road and permitting them to travel at a lower price than other patrons of the road.

In *Beardsley v. New York, Lake Erie and Western Railroad Company*, 162 N. Y. 230, decided in 1900, the court decided that the " Mileage Book Law," Chapter 1027 of the Laws of 1895 of the State of New York, was unconstitutional as to corporations existing at the time of the enactment of the law because the statute was an illegal invasion of the property rights of the railroad corporation and this decision was based on the case decided in the United States Supreme Court in 1899.

In *Purdy v. Erie Railroad Company*, 162 N. Y. 42, which was also decided in 1900, the Court of Appeals decided that the " Mileage Book Law," Chapter 1027 of the Laws of 1895, was constitutional as to railroad corporations which were incorporated in New York after the law took effect. The same decision was arrived at in *Minor v. Erie Railroad Company*, 171 N. Y. 566, and in *Horton v. Erie Railroad Company*, 86 A. D. 379.

In later years, the respondent in the present case also contested this " Mileage Book Law " claiming that it was unconstitutional and the case is entitled *Parish v. Ulster and Delaware Railroad Company*, 192 N. Y. 353, and was decided in the year 1908. This was an action arising out of the ejectment of Mrs. Parish who presented a mileage book made out in the name of her husband, Mr. H. M. Parish, and the Court of Appeals decided that the company was

subject to the " Mileage Book Law " so-called, because the road was more than one hundred miles in length and was incorporated in 1901, which was subsequent to the time that the " Mileage Book Law " was created.

In my opinion, Section 49 read in connection with subdivision 4 of Section 33 of the Public Service Commissions Law, gives the Commission the power to increase mileage book rates notwithstanding the provisions of Section 60 of the Railroad Law and that this latter section was left unrepealed for the specific purpose of providing that the mileage book rates therein set forth should be the prevailing mileage book rates for new railroad corporations subject to the act in the first instance but that such rates should nevertheless be subject to an increase by the Public Service Commission if, after investigation, it should determine that the rates ought to be increased. The evident intent of the legislature of the State of New York in all legislation which has been enacted since the Public Service Commissions Law was created has been to give the commissions full power to finally determine what are just and reasonable rates and to raise or lower the existing rates. Unless that assumption is correct, it will be seen that the authority of the Commission would be seriously curtailed, and it would be powerless to give the necessary relief to the corporations subject to its jurisdiction upon a proper showing. The trend of the times being to give the Commissions full power to regulate the corporations under their jurisdiction, and this includes the fixing of fair and reasonable rates, I cannot agree that the legislature of the great State of New York has withheld from this Commission the power to fix a mileage rate for a railroad corporation in this State which will aid it in performing the service which is required by the public. No question can be raised as to the right of The Public Service Commissions to revise all rates other than mileage book rates because this power is specifically given by the Public Service Commissions Law and it is therefore fair to assume that it was the intention of the legislature to delegate to the Commissions the power to regulate all rates

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of every kind and description on the railroads including mileage book rates, having in mind the application of Section 60 as herein set forth, except where restricted by charter provisions. The courts of the State have held decisively that the Commissions have the power to regulate rates. See

People ex rel. The Delaware and Hudson Company v. Public Service Commission, Second District, 140 A. D. 839.

People ex rel. New York, New Haven and Hartford Railway Company v. Public Service Commission, Second District, 159 A. D. 531.

People ex rel. New York Central and Hudson River Railroad Company v. Public Service Commission, Second District, 159 A. D. 546.

The last two cases have also been affirmed by the Court of Appeals.

The Missouri case which I have hereinbefore referred to arose out of the refusal of the Public Service Commission of the State of Missouri to consider the application of the Missouri Southern Railroad Company for permission to increase its rates over the maximum rates prescribed by statute on the ground that it had no authority to grant such relief in view of the provisions of the statute of the State of Missouri providing for a maximum of 2 cents per mile for passengers. The case is reported in Vol. 259 of Missouri reports, p. 704, the opinion in the case having been written by Chief Justice Lann.

The Public Utilities Act of the State of Missouri is substantially the same as the Public Service Commissions Law of the State of New York, and the section relating to rates was copied verbatim from our law. The Court decided that it was the intention of the legislature of the State of Missouri to give full power to the Commission to consider the question of rates and that inasmuch as it had the power to require proper service to the public, it of necessity also had power to regulate the income and fixed charges of the corporations which must be considered at the same time. It also decided that the law gave the Commission full power to

fix and enforce rates either above or below the rates fixed by statute when the existing rates do not provide a reasonable average return on the value of the property actually used in the public service. The decision also dealt with the question of whether or not the Commission had judicial or legislative powers and decided that it did not, but that, on the other hand, as an administrative arm of the government, while it had no power to repeal a statute or declare the same unconstitutional, it did have power, after investigation as required by law, to exercise the legislative function of fixing railroad rates either by increasing or decreasing them.

I have, therefore, come to the conclusion that the power vested in the Public Service Commissions of the State of New York is equal in every respect to that which the highest court of the State of Missouri says is vested in the Public Service Commission of that State and that our Commission should grant the relief asked for by the railroad company by permitting an increase of the mileage book rates to such an amount as will in the opinion of the Commission afford the relief so much needed by the railroad company.

DISSENTING OPINION.

EMMET, *Commissioner*:

I differ from the conclusions reached by a majority of my associates in regard to this case. It is not conceivable to me that the legislature could have intended to go as far as my associates admit that they went in passing the sections of the Public Service Commissions Law hereinafter referred to, that is to say, to the point of giving these Commissions power to order *reductions* in rates which were unjust and unfair to the traveling public, because too *high*, without at the same time intending to go as far as I assert that they actually went, that is to say, to the point of giving the Commissions power also to permit *increases* in rates which were unjust and unfair to the railroads because they were too *low*.

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I do not think that the construction which has been placed upon our powers by the three Commissioners whose views have prevailed, accords with the obvious spirit and intention of the legislature and Governor Hughes when, in 1908, they inaugurated the policy of governmental regulation of public utilities in New York State, setting up a new system of regulation at the hands of the Public Service Commissions vested with comprehensive powers as an alternative, on the one hand, to the inexpert and bungling legislative control of former years, and on the other hand, to out-and-out governmental ownership and operation of our public utilities. The so-called Hughes law of 1907 — which, with slight changes, is the law under which we are acting today — was a courageous and comprehensive effort by earnest men to deal with a great and complex problem in a spirit of absolute fairness to all the interests involved. It would have been wholly inconsistent with this purpose for Governor Hughes and the legislature to have consciously and intentionally procured the enactment of such a law regulating the issue and price of mileage tickets as my associates, other than Mr. Carr, conceive our present law to be. If my associates are right in their view, we now have upon our statute books precisely the kind of law which the framers of our present regulatory system were obviously doing their best to get away from. That is to say, we have a law which, in dealing with the delicate problem of railroad rates, permits of no really discriminating exercise of judgment by the Commissions, but instead perpetuates all the old evils of clumsy and ill-considered legislative domination, this in relation to the question which, of all others connected with the business of railroading, most requires expert handling if it is to be settled with any degree of fairness or justice. We have a law which only takes one side of a complicated problem into account and only aims at giving relief to one of the classes of people interested in the proper solution of this problem. If it was really the intention of the legislature and Governor Hughes to give us such a law as my associates seem to

think the present law is, then it was apparently their intention that these Commissions should really be very much the sort of public bodies that certain demagogues have always said that they ought to be, bodies organized not primarily for the purpose of dispensing evenhanded justice as between the corporations and the people, but organized primarily to give an odor of sanctity and a color of right to repressive attacks upon private capital and enterprise engaged in the public utility field. That is what the old slapdash legislation, which my associates say is still controlling in the matter of mileage rates, for the most part aimed at doing, and that is the kind of public body which this Commission most certainly would be if we were really vested with such grotesquely one-sided powers as it is here claimed we have—powers which while adequate to give unlimited relief to one side in a rate controversy are so inadequate, when applied to the rights of the other party that they cannot by any possibility, in cases like the present one, lead to anything but failure of justice.

That is practically where the views of my associates seem to leave us. If they are right, there must be a failure of justice in the present case and (gloss it over as you please) our status as a public body would be about as I have just described it. Now, do the law and the facts of the present case require that we shall reach a decision involving conclusions so damaging as these would be, not only to the virtue of our present regulatory system, but to the motives and intentions of those who framed the present law?

As I have already said, I do not think they do. I cannot reconcile myself to the idea that it is our duty to read into the law any such intention upon the part of its framers. The actual words of the statutes, which, with the circumstances surrounding their enactment, are controlling in the matter, would have to be a good deal more ambiguous than they really are, before I could with an easy conscience accept such a theory of their meaning. Until otherwise advised by a court of competent jurisdiction, I shall

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take the present law to mean what my understanding of the conditions attending its passage leads me to feel sure that Governor Hughes and the legislature intended it to mean, namely, that this Commission has absolute power (subject, of course, to court review) to approve of an increase in mileage rates above the 2-cent maximum established by law in 1895, if it believes, after taking proof upon the question, that the present rates are too low to produce a reasonable return upon the property invested in the public service.

I think I am correct in saying that, upon the merits of the application alone—leaving out the jurisdictional question entirely—none of my associates would hesitate to join in an order permitting The Ulster and Delaware Railroad Company to raise its present rates for transportation upon ~~mileage~~ tickets to 3 cents per mile. It has been shown that the road is running behind and needs a larger revenue, and that there is justification for the belief that the proposed increase in mileage rates would assist materially in producing this larger revenue. The railroad is not asking here for leave to charge a higher rate than the old 3-cent maximum for single-trip transportation established a long time ago by the legislature. It is merely asking that it shall, for the present, be permitted to charge this maximum for transportation upon the mileage tickets as well as upon single-trip tickets. People are not compelled to buy mileage books unless they want to. Mileage tickets, it is true, are spoken of in law as belonging to a class of “reduced rate” tickets, but I do not understand that this use of the expression “reduced rate” as a descriptive term means that, as a matter of principle, mileage book transportation *must* necessarily be cheaper than single-trip ticket transportation. Ordinarily it is cheaper, I admit, but there are other conveniences than cheapness attaching to the possession of a mileage book. As a matter of fact my understanding is that mileage book transportation on the New York Central railroad practically corresponds in price (for reasons which need not be entered

into here) to single-trip ticket transportation. Notwithstanding this fact many people find it on the whole worth while to carry mileage books on the New York Central, although it is no noticeable financial inducement for them to do so. That would be the situation here if the present application were granted. The old 3-cent maximum rate, fixed by the legislature in the days before the Public Service Commissions had yet been dreamed of, would still stand. The only difference would be that the class of travelers who have the ready money to buy a large number of tickets all at once would not for a time enjoy the special privilege they now have of doing this at a reduced rate. This privilege would temporarily be taken away from them upon what seems to me—and as I understand it would also seem to my associates if it were not for the jurisdictional question which troubles them—to be the good and sufficient ground that its enjoyment, under existing conditions, prevents the railroad company from earning a large enough average return upon the value of its property to pay a reasonable return to its stockholders, and at the same time make proper reservations out of its income for surplus and contingencies.

Now, as I have said, I think that one of the chief reasons for the creation of the Public Service Commissions was to enable this whole rate situation to be handled in such a way as to insure, at all times and in all cases, a just and impartial exercise of such powers as the State claims to have over the rates charged by privately owned public utility corporations. The keynote of the whole scheme was *completeness* in the jurisdiction of the Commissions over whatever regulatory functions were entrusted to them at all. It was intended that the legislature should not concern itself further with rate-making questions. It was intended that the Commission should, in the interest of careful and scientific handling, deal with this subject as the sole representatives of the State of New York. I do not mean to say, of course, that when the law was passed the legislature consciously and permanently divested itself

of all rights to intervene in the future in rate-making matters. It at least indicated, however, a pretty plain intention not to exercise this right again until the newly-created regulatory machinery had been fully tested. It is quite true, of course, that some of our late legislatures have not felt themselves bound by this self-denying ordinance, because several times since then they have passed arbitrary rate bills, but the unwisdom of such interference with the Commissions in rate matters has been so generally recognized as to have practically defeated the purpose of the attempted legislation. It has been almost as though we have had in this State since the passage of the Public Service Commissions Law a constitutional inhibition against further rate legislation—because governors of both parties have, one after another, vetoed these rate bills upon the sole ground that, regardless of their merits, they dealt with a matter which the Public Service Commissions were created to handle, and that so long as the Commissions existed, with their present powers over rates, it was fundamentally wrong that their potential usefulness should be interfered with and nullified in this manner. In other words, since the creation of the Public Service Commissions the attitude of all chief executives toward legislative activity in rate questions has been that legislation of this kind constituted plain interference with one of the most important functions of the Commissions—for the expert performance of which they were, in fact, largely created—and this, as I have said, has occurred notwithstanding the fact that there is as yet no constitutional provision to that effect in New York State. I mention all this as bearing upon the question of what was obviously intended, as to the *completeness* of the jurisdiction granted to the Commissions over rate problems, when the Public Service Commissions Law was passed.

Now the language employed in the Public Service Commissions Law to carry this intention into effect, while not perhaps as explicit as it might be, seems to me to answer the purpose very well. In Section 26 of the law, dealing

with the question of public utility rates generally, it is prescribed that these shall be “just and reasonable,” and that they shall be as provided “*by law or by order of the Commissions.*” Dealing more particularly with mileage book rates on railroads, Section 33, subdivision 4, provides in part as follows:

“Nothing in this section or in any other provision of law shall be deemed to limit the power of the Commission to require the sale of, and upon investigation prescribe reasonable and just fares as the maximum to be charged for, commutation, school or family commutation mileage tickets over railroads or street railroads, joint interchangeable mileage tickets, round trip excursion mileage tickets, or any other form of reduced rate passenger tickets over such railroads or street railroads * * *.”

Then, after explicitly laying down in Section 49 the principle that, in fixing rates to be charged on railroads and street railroads, the Commissions should take into account the right of the owners of these properties to receive “a reasonable average return upon the value of the property actually used in the public service and the necessity of making reservation out of income for surplus and contingencies,” and after giving the Commissions the right to fix such rates, the law goes on to say:

“Whenever either Commission shall be of the opinion, after a hearing upon its own motion or upon a complaint * * * that the maximum rates, fares or charges collected or charged for any forms of reduced fare passenger transportation tickets by any such common carrier, railroad or street railroad corporation is insufficient to yield reasonable compensation for the service rendered, and are unjust and unreasonable, * * * the Commission shall, with due regard among other things to a reasonable average return upon the value of the property actually used in the public service and to the necessity of making reservation out of income for surplus and contingencies, determine the just and reasonable rates, fares and charges to be hereafter observed and in force as the maximum to be charged for such mileage, excursion, school or family commutation, half fare or any other form of reduced rate tickets for the transportation of persons * * * and shall determine and prescribe the reasonable and just rates, fares and charges to be hereafter observed and in force as the maximum to be charged for any such form of ticket or tickets for the transportation of persons within the State * * *.”

And, finally, Section 127 of the Public Service Commissions Law, after specifying portions of certain old laws which are repealed by the new law, goes on to employ this very explicit and comprehensive language: "*All other acts and parts of acts otherwise in conflict with this act are hereby repealed.*" (I am informed that there are sixty-four chapters of the Consolidated Laws, but that with the single exception of the penal law none contains a similar provision. And the admirable lawyer who is my informant upon this point goes on to ask:—"Why, unless to make doubly sure that in case of any conflict between the powers vested in the Public Service Commissions and existing law those powers might be vindicated?")

These, then, are the provisions of our Public Service Commissions Law which give us what authority we have over rate questions like the one under consideration. I submit that they accomplish fairly well the purpose which I have argued that the legislature and Governor Hughes had in mind when they created these Commissions. Taken together, they indicate several things. They indicate, in the first place, a general intention to be quite fair to the railroads, as well as to the traveling public, in rate matters—an intention which would of course be entirely nullified by such a construction as my associates, other than Mr. Carr, have placed upon the law. They indicate, secondly, in my opinion, a specific intention that the rates on mileage tickets shall be fixed by the Commissions according to the equities of each particular situation, no matter whether this result in raising or lowering rates in any given case. (*Village of Saratoga Springs v. Saratoga, etc., Company*, 191 N. Y. 123, 143-144.) Thirdly, they indicate an intention to repeal all laws which are inconsistent with these purposes. My associates, however, point to Section 60 of the Railroad Law, which was on our books for many years before the creation of the Public Service Commissions and which, after the old legislative fashion, arbitrarily establishes the rate of 2 cents a mile for mileage ticket transportation upon roads like the Ulster and Delaware. It seems that

this provision, along with nearly all the rest of the old Railroad Law, was re-enacted at the time the Public Service Commissions Law was passed. The chapter numbers would even indicate the re-enactment of the old Railroad Law immediately followed the enactment of the new Public Service Law. Technically, this was a necessary step for the legislature to take in putting the new order of things established by the passage of the Public Service Commissions Law into operation. But, relying upon the sequence of chapter numbers, a majority of my associates seem to think that the re-enactment of the Railroad Law leaves Section 60 of that statute not subject to the repeal provision in the Public Service Commissions Law, and that it indicates an intention upon the part of the legislature to at once undo what it had just accomplished in the way of substituting careful, expert handling of technical rate problems for the outworn legislative method of dealing with these. They therefore propound the theory that such powers as these Commissions have over rates must have been given to them solely for the purpose of compelling *reductions* in rates, from time to time, below the maximum established by old Section 60 of the Railroad Law, and that we have no right to consent to the raising of rates above the maximum then fixed, no matter for what good cause.

Now as a legal technicality this may be all very well, but as a common sense proposition it doesn't seem to me to stand the test of scrutiny. To suppose that the legislature intended, in re-enacting the Public Service Commissions Law, to *prevent* the Public Service Commissions from doing evenhanded justice in rate cases, is to suppose that as soon as it had enacted the Public Service Commissions Law it repented of its action and sought to undo what was perhaps the chief achievement of the Law. This is rather a violent assumption. Yet it is what must have been intended if the theory of my associates is correct. Of course no such thing was intended. The purpose of the re-enactment of the Railroad Law was to help out and fortify the fundamental idea of the Public Service Commissions Law.

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not to destroy it. If Section 60 was left in the re-enacted law intentionally, it was left there merely as a convenient general way of handling the mileage rate situation until the Commission should, upon proper evidence in actual cases, apply their new powers to an intelligent treatment of these cases. As re-enacted, Section 60 could not have been intended to have any larger scope than that. It was intended to be binding *except as and when the Commissions, in particular cases, should decide otherwise*. I suppose it was assumed by the legislature that the passage of the Public Service Commissions Law simultaneously with the re-enactment of Section 60 of the Railroad Law, would make it plain to the public, to the railroads and to the Commissions that this was what was meant. Otherwise Section 60 would, of course, have been repealed, precisely as every other antique provision of law that seemed inconsistent with the new arrangement was repealed. It is not [im]possible that the legislature thought they *had* repealed it, and that its re-enactment was one of those oversights which often happen when bulky statutes come up for re-passage *en bloc*. Our legislatures—whose real intentions, as every lawyer knows, are frequently not expressed as scientifically as they might be—make mistakes of this kind every winter, and whenever such a thing happens in connection with our Public Service Commissions Law, it has always seemed to me to be the duty of the Commissions (at least until instructed otherwise by the courts) not to permit obvious errors or slouchy law-making of this sort to limit the Commission's usefulness in matters where it was intended that it should be very useful indeed. Even if we admit (which personally I do not) that the presence of Section 60 in the re-enacted Railroad Law leaves the actual intentions of the legislature with regard to the matter we are discussing a little in doubt, we must not forget that this kind of obscurity as to precise legislative intent is a very common fault, running through the whole structure of our statute law.

Particularly is this true where the law upon some one point has to be spelled out of scattered provisions in differ-

ent statutes. In almost every case of this kind a certain amount of conflicting—and sometimes irreconcilable—language can be discovered by industrious and technical-minded lawyers. In such cases it seems to me that this Commission, more than most governmental bodies—because all through the law runs the plain intimation that legal technicalities should not govern our decisions—ought to shun, as it would shun a plague, every construction of a doubtful statute that seems to be at variance with the broader presumptions, the more fundamental purposes, of the Public Service Commissions Law. My associates other than Mr. Carr, in the construction they have placed upon the statutory provisions we are considering, do not seem to me to have approached the problem from precisely that standpoint. They would have reached a different conclusion, I think, if they had.

Last, the argument I have been making may seem to some like an attempt upon the part of a public official to claim powers which he does not rightfully possess. I ought perhaps to add that I am not partial to the idea that governmental officials should ordinarily seek to read larger powers for themselves into the law than are explicitly stated there. The tendency should be in the other direction. Public officers should be moderate and conservative in the construction which they place upon the laws granting them power and authority. But here, it seems, the whole underlying spirit and purpose of the Public Service Commissions Law is at stake—imperiled by what I can only regard as a trivial technicality. In such a situation the Commissions themselves should certainly—whatever the courts may do afterwards—construe doubtful points in the law in accordance with what they know to be the underlying spirit and purpose of the law. I feel that we are not, as a Commission, doing our full duty when, through an excess of lawyer-like caution, we invoke narrow and technical principles of statutory construction as a reason for declining to perform an act of simple justice to a railroad corporation—merely because the wording of the law is, at worst, slightly ambiguous, although the spirit of the law is plain.

WASHINGTON.

Public Service Commission.

D. D. DAY *et al.* v. TACOMA RAILWAY AND POWER COMPANY.

Case No. 1819.

Decided April 30, 1915.

Commission Without Jurisdiction to Authorize Abandonment of Portion of Property of Public Utility.

Held: That the Commission has no authority to approve, directly or indirectly, the abandonment by a public service corporation of a portion of its property devoted to the public use;

That the Commission's duty is to provide for adequate and sufficient service, and that its jurisdiction extends only to the question as to whether or not the service should be rendered.

OPINION AND ORDER.

This is a proceeding brought by D. D. Day and eleven others, asking the Commission to request the attorney general to begin appropriate proceedings looking to the securing of a permanent injunction against the Tacoma Railway and Power Company from abandoning a portion of its railway in Pierce County; the allegation being that the railway company is threatening to, and, unless restrained will, abandon the use of that portion of its line operated between the city of Tacoma and the town of Steilacoom, which is located between Lemon's Beach and Chamber's Creek, on said line.

It is admitted by the railway company that it purposes to abandon that portion of the line referred to, but that it is not the intention of the said railway company to abandon said portion of said line until another line is in operation between the state insane asylum and the town of Steilacoom.

The matter came on for hearing before the Commission on the fifth day of March, 1915, at Tacoma, Washington, all parties being represented; the petitioners appearing by

Mr. M. S. Grosscup, their attorney, and the railway company appearing by *Mr. John A. Shackelford*.

From the evidence submitted it appears that it is the purpose of the railway company to construct and operate a line between the state insane asylum and the town of Steilacoom, but that said line has not been constructed for the reason that the railway company has been involved in litigation in addition to this hearing, which litigation was instituted for the purpose of preventing the railway company from abandoning the lines between Lemon's Beach and Chamber's Creek. The railway company alleges that, until it can have some action as to whether or not it will be permitted to abandon that portion of the line referred to, it cannot safely construct and operate the line between the state asylum and Steilacoom. The purpose of this proceeding appears to be to secure from the Commission in advance an expression as to what its attitude will be with reference to the service to be performed by the railway company in the event the contemplated line is constructed.

The Commission is of the opinion that it has no authority to directly or indirectly approve of the abandonment by a public service corporation of a part of its property devoted to the public use. The Commission conceives it to be its duty to provide for adequate and sufficient service, and its jurisdiction extends only to the determination of the question as to whether or not the Commission is of the opinion that said service should be rendered.

From the evidence produced, the Commission is of the opinion that, if the railway company builds and operates the proposed line between the state asylum and the town of Steilacoom, it would be unreasonable for this Commission to compel said railway company to continue the service between Lemon's Beach and Chamber's Creek.

It is, therefore, ordered, That until such time as the railway company shall build and operate a line between the state insane asylum and the town of Steilacoom, the said Tacoma Railway and Power Company shall continue its present service between Lemon's Beach and the crossing of Chamber's Creek.

American Telephone and Telegraph Company
Legal Department
15 Dey Street, New York, N. Y.

COMMISSION LEAFLET No. 46

**Recent Commission Orders, Rulings and Decisions
from the following States:**

California	Montana
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OCTOBER 1, 1915

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PART I.
COMMISSION ORDERS, RULINGS AND DECISIONS
DIRECTLY AFFECTING TELEPHONE AND
TELEGRAPH COMPANIES.

CALIFORNIA.

Railroad Commission.

IN THE MATTER OF THE APPLICATION OF THE VALLEY TELE-
PHONE COMPANY FOR A CERTIFICATE OF PUBLIC CONVEN-
IENCE AND NECESSITY.

Application No. 1349 — Decision No. 2661.

Decided August 3, 1915.

Application for Rehearing Denied.*

APPEARANCES:

Haines and Haines, for Valley Telephone Company.

John G. Mott and R. D. McPherrin, for the Imperial Tele-
phone Company.

ORDER.

A public hearing having been had upon this application for rehearing, at which evidence was introduced and argument made, and it appearing to the Commission that no substantial new evidence was introduced or has been offered, and that all of the matters urged in this application for rehearing were fully considered in the opinion preceding the order† heretofore made herein, and there appearing no good reason why said application for rehearing should be granted,

It is hereby ordered by the Railroad Commission of the State of California, That the application for rehearing herein be and the same is hereby denied.

Dated at San Francisco, California, this third day of August, 1915.

* Writ of review denied by Supreme Court of California. Sept. 8, 1915.

† See Commission Leaflet No. 38, p. 616.

ILLINOIS.

State Public Utilities Commission.

**IN THE MATTER OF THE APPLICATION OF THE RECEIVERS OF
THE CENTRAL UNION TELEPHONE COMPANY FOR CONSENT
TO THE GRANTING OF " FACILITY LICENSES ".**

Case No. 3323.

Decided August 5, 1915.

**Granting of Licenses Permitting Joint Use of Poles and Similar Facili-
ties where Entire Space is Not Used Authorized —
Conditions Fixed.**

OPINION AND ORDER.

The application in the above entitled matter represents that the petitioners, David R. Forgan, Edgar S. Bloom and Frank F. Fowle, as Receivers of the Central Union Telephone Company, a corporation organized under the laws of Illinois, are in possession and control of, and are managing and operating, all of the telephone property and telephone equipment of said Central Union Telephone Company in the State of Illinois, and furnishing telephone service, local and long distance, to the public; that in many instances it is convenient and advisable to grant under a " facility license ", the right to attach and maintain certain of the wires, cables and fixtures of another public utility to and upon the poles and other property of said Central Union Telephone Company, where the space so granted is not at the time needed by, or useful to, the petitioners in connection with carrying on the telephone business or in the performance of their duties to the public.

Application is accordingly made for a general order permitting said Receivers to grant " facility licenses " as

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herein provided, and the Commission having considered said application and being fully advised in the premises;

It is, therefore, ordered, That the petitioners, David R. Forgan, Edgar S. Bloom and Frank F. Fowle, as Receivers of Central Union Telephone Company, be, and they are hereby, authorized to grant "facility licenses" permitting other public utilities to attach and maintain their wires, cables and fixtures to and upon the poles and other property of said Central Union Telephone Company, in the State of Illinois, where the space granted by such "facility license" is not needed by, or useful to, the said Receivers in connection with carrying on the said telephone business or in the performance of their duties to the public; *provided that* every such facility license shall be made for a term not exceeding five years and for such sum of money as will constitute a reasonable return for such grant, and upon such other terms and conditions as may be agreed upon by the licensor and licensee, and as are not in conflict with any of the rules and regulations of this Commission or with any of the provisions of the act entitled "*An Act to Provide for the Regulation of Public Utilities*," now in force in the State of Illinois;

It is further ordered, That in every such "facility license", provisions shall be made for the termination thereof upon thirty days' notice by the licensor to the licensee, and further provision that upon objection at any time by this Commission to the further continuance of the "facility license", the same shall be immediately cancelled and terminated.

It is further ordered, That two copies of every "facility license" entered into pursuant to this general order shall be filed with the Commission within twenty days from the date of the execution of such "facility license", and that such copies be certified by the proper officer of said licensor.

By order of the Commission at Springfield, Illinois, this fifth day of August, 1915.

WAYNESVILLE TELEPHONE EXCHANGE, BY JAMES DAGLEY,
v. NATIONAL TELEPHONE AND ELECTRIC COMPANY AND
BAKER TELEPHONE SYSTEM.

Case No. 3428.

Decided August 5, 1915.

Establishment of Physical Connection Between the Exchanges of Competing Companies Refused — Principle of Protective Charge Recognized.

Complainant sought the establishment of physical connection between its exchange and the exchange and lines of the respondent companies at Waynesville.

The Waynesville Telephone Exchange was an association of rural lines centering in the village of Waynesville and operating an exchange there. The National company also operated an exchange at Waynesville and the Baker system had physical connection at that point with the National company by means of a toll line from McLean to Waynesville.

A petition requesting the establishment of the connection had been signed by thirty-five subscribers of the Waynesville Telephone Exchange and seven subscribers of the National company.

Held: That before ordering the establishment of a physical connection between the lines of competing companies, the Commission must find (1) that public convenience and necessity require the establishment of a physical connection, (2) that the establishment of such connection is practicable, (3) that it would not impair the service of either company, (4) that it would not seriously interfere with or jeopardize private rights:

That on the question of public convenience and necessity, as only forty-two of the two hundred and sixty-four Waynesville subscribers of both companies signed the petition, although importuned to do so, the petition does not represent the views of the majority of the subscribers;

That there is no physical obstacle in the way of the establishment of the connection;

That the establishment of the connection on a free interchange of service basis as desired by the complainant would result in irreparable injury to the respondent since the rates of the complainant are lower than those of the respondent;

That if a connection were established it would be necessary, because of the considerable difference in the amount of investment and the character of construction of the two properties, which is reflected in the higher rates of the National company, to apply some protective rate to all local intercompany calls, that if such a protective rate were applied, there would very probably be no local intercompany calls;

That the complainant already has adequate connection for toll service.

OPINION AND ORDER.

The petition in this case represents that the complainant is engaged in the management and operation of a telephone system, consisting of rural lines in Dewitt and Logan counties and a local exchange at Waynesville, Dewitt County; that the defendants are public utilities and have refused to permit a "just, equitable and mutual connection" between their lines and the exchange or switchboard of the complainant.

Answering the defendant National Telephone and Electric Company, hereinafter referred to as the National company, denies all of the allegations of the complainant, and avers the fact to be that it is impossible to establish a "just, equitable and mutual connection" between the exchanges or switchboards of the complainant and said defendant. Similar denial of the complainant's allegations is made by the defendant Baker Telephone System, and the further statement is made that the Baker Telephone System is not opposed to the establishment of a physical connection with the Waynesville Telephone Exchange provided satisfactory terms can be reached governing the establishment of such connection.

Hearing was held at Springfield, Illinois, May 4, 1915. *James Dagley* appeared for the complainant. *Orville F. Berry* and *B. B. Boynton*, attorneys, appeared for the defendants.

It appeared from the testimony presented by the complainant, that the Waynesville Telephone Exchange is an association of rural lines centering in the village of Waynesville and operating a telephone exchange in that village, which serves about 75 town subscribers and about 100 rural subscribers; that the National company also operates an exchange at Waynesville, serving about 89 subscribers in and around the village; that the Baker Telephone System does not operate an exchange at Waynesville, but has physical connection at that point with the National company by means of a toll line extending from McLean to Waynesville; that the Waynesville Telephone Exchange

has connection, by means of trunk lines, with a number of points, viz.: Wapella, Heyworth, Beason, Atlanta, and Minier, and that by means of such trunk line connections complainant's subscribers have access to the toll line system of the Central Union (Bell) Telephone Company and its connecting companies, also to the system of the National company.

It further appeared that the National company furnishes to its subscribers in the village of Waynesville so-called free service with other points on its system including Clinton, which is the county seat and commercial center of De-witt County; that the complainant sought the establishment of a physical connection with the National company at Waynesville for the interchange of local service and in order that complainant's subscribers might have direct connection with the system of the National company; that the National company refused to consider any proposition which provided for the establishment of a physical connection for the interchange of local service, and that it made a counter-proposition to the complainant, which provided for the establishment of such connection on a toll basis, and that this proposition was rejected by the complainant.

In support of its contention that there is a demand for the establishment of a physical connection between the lines of the Waynesville Telephone Exchange and the National company and the Baker Telephone System, the complainant presented, at the hearing, a petition signed by 35 subscribers of the Waynesville Telephone Exchange and 7 subscribers of the National company. .

It appeared from the testimony presented by the National company, that certain subscribers of the complainant are seeking the establishment of a physical connection with the lines of the National company for the purpose of using such lines in the same manner as they use the lines of the complainant; that the National company has adequate facilities in the village of Waynesville; that the complainant is responsible for the divided service in the village of Waynesville and the rural territory contiguous thereto by reason

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of a desire on the part of its subscribers for a cheap telephone service; that the subscribers of the complainant are not deprived of toll service, either over Bell lines or the lines of the National company, and that the establishment of a physical connection in the manner desired by the complainant would result in irreparable injury to the National company.

No testimony was presented by the Baker Telephone System, but its counsel stated that it was not opposed to the establishment of a physical connection for the handling of toll messages, provided satisfactory terms could be arranged.

The Commission held, in the case of *J. G. Woker v. Pearl City Independent Telephone Company*,* No. 2938, that in considering a proposed physical connection between the lines of two competing companies it is necessary that the facts in the case be such as to show clearly (1) that public convenience and necessity demand and require the establishment of the physical connection; (2) that the establishment of such connection is practicable; (3) that it would not impair the service of either company; and (4) that it would not seriously interfere with or jeopardize private rights.

In this case, on the question whether public convenience and necessity require a physical connection, proof is lacking. The petition presented at the hearing by the complainant carries the names of 42 persons, 35 of whom are the subscribers of the complainant and 7 of whom are subscribers of the National company. As the complainant is serving about 175 subscribers from its Waynesville exchange, and the National company is serving about 89 subscribers, it does not appear that this petition represents the view of a majority of the subscribers of both companies at Waynesville, particularly when it was brought out at the hearing that such subscribers were importuned to sign the petition by certain other subscribers.

The complainant does not allege, and the testimony does not establish, that an interchange of local service is desired

* See Commission Leaflet No. 45, p. 889.

by the subscribers of the Waynesville Telephone Exchange. On the contrary, it appeared from the testimony that the desire of the parties responsible for the filing of the complaint was that the National company be required to furnish so-called free service over its system to the subscribers of the complainant, and that the latter, in return, give so-called free service over its system to the subscribers of the National company, the assumption being that the use of the facilities of one company would counter-balance the use of the facilities of the other. In other words, that a purely reciprocal arrangement would be proper and should be made.

Complainant's manager testified that one reason the establishment of a physical connection is desired, is because, under present conditions, the subscribers of the complainant can only reach the subscribers of the National company in a round-about manner and that a more direct connection between the two companies would enable the complainant company's operator to handle calls more conveniently than is possible under the existing arrangement. Complainant's manager further testified that he felt that an interchange of service on a so-called free basis would be to the advantage of the National company, but to what extent this arrangement would benefit the National company was not explained by the witness.

It seems quite clear in this case that the complainant company is seeking the establishment of a physical connection between its own exchange and that of its competitor without giving any consideration to the probable effect of such a connection. Complainant's manager stated that the Waynesville Telephone Exchange is "not looking out" for the National Telephone and Electric Company, and although he finally admitted that a charge probably should be made on all intercompany messages, it was very evident, from his testimony, that the chief desire of the complainant is to obtain the use of the lines of its competitor at little or no cost to itself. This was further borne out by the testimony of other witnesses for the complainant.

Insofar as the practicability of the connection in this case is concerned, there appears to be no physical obstacle in the way of its establishment. While witnesses for the National company testified that the lines of the complainant are all grounded and not constructed in a manner capable of rendering good service, it appears that the lines of the complainant are no different than those of other rural telephone companies with which the National company has established connection.

That the establishment of a physical connection under the conditions desired by the complainant will result in injury to the National company is apparent from the record in this case. The rates of the complainant are: Business telephones, \$10.00; residence telephones, \$6.00; and rural telephones, \$4.00 per year; while the Waynesville rates of the National company are: Business telephones, \$20.00; residence telephones, \$15.00; and rural telephones, \$15.00 per year. With the complainant serving approximately 175 subscribers and the National company serving only about 89 subscribers, it is obvious that if a connection is established between the two companies, in the manner desired by the complainant, and the rates of the two companies remain as above quoted, many of the subscribers of the National company will seek the cheaper service of the Waynesville Telephone Exchange. This would result in a corresponding loss to the National company.

Assuming that a physical connection were established, it is unlikely that arrangements could be made for the interchange of local service on a so-called free basis, and since there is considerable difference in the amount of investment and the character of the construction of the two properties, which, in effect, is reflected in the higher rates of the National company, some protective rate would have to be applied to all intercompany calls, and with such rate in effect it is doubtful whether there would be any intercompany traffic between local subscribers. In fact the testimony strongly tends to show there would be practically no intercompany calls if a protective rate were applied.

It is possible that the subscribers of the complainant may have occasion to make use of the toll lines of the National company, but the record shows that the complainant now has toll connection through Beason and Minier with the toll line system of the Central Union Telephone Company and also connections through Wapella and Atlanta with the lines of the National company and its connecting companies, including the Baker Telephone System.

After a careful consideration of all the facts presented in this case, we are of the opinion that the prayer of the petitioner for the establishment of a physical connection between the exchanges of the Waynesville Telephone Exchange and the National Telephone and Electric Company at Waynesville, Dewitt County, Illinois, should not be granted.

It is, therefore, ordered, That the complaint of the Waynesville Telephone Exchange, by James Dagley, against the National Telephone and Electric Company and the Baker Telephone System, be, and the same is hereby, dismissed.

By order of the Commission, this fifth day of August, 1915, dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF THE MILLSTADT TELEPHONE COMPANY FOR AUTHORITY TO CHANGE RATES.

Case No. 3459.

Decided August 5, 1915.

Increase in Rates Authorized — Discrimination in Favor of Stockholders Eliminated.

OPINION AND ORDER.

The petitioner in this case is a public utility engaged in the management and operation of a telephone system in the village of Millstadt, St. Clair County, Illinois. Appli-

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cation sets forth that prior to February 1, 1914, the petitioner had in effect a rate of \$1.00 per month for rented telephones and 50 cents per month for stockholders' telephones; that this discrimination was discontinued on February 1, 1914, and a uniform rate of \$1.25 per month established; that subsequently this change in rates was reported to the Commission and it appearing that an increase was made without the consent and approval of the Commission, the Millstadt Telephone Company was directed by the Commission to file application for authority to change rates.

Hearing was held at Springfield, Illinois, June 16, 1915. *G. F. Baltz*, manager, appeared for the petitioner. No one appeared objecting.

In response to a notice of the date of hearing, *E. W. Marxer*, president of the village board of Millstadt, addressed a letter to the Commission, under date of June 5, 1915, from which it appears that the subscribers of the company made no protest over the increase in rates made effective February 1, 1914, and that the manner in which the petitioner has conducted its affairs in the village of Millstadt has been very satisfactory to its patrons.

From the testimony presented at the hearing, it appeared that the Millstadt Telephone Company was organized primarily to serve the convenience of its subscribers. Later, in response to a general demand for service, the petitioner extended its plant and provided such service.

It further appeared that the petitioner operates exclusively within the village of Millstadt, serving about 65 subscribers; that the switchboard and other central office equipment is owned and operated by the St. Clair Farmers Mutual Telephone Company, which also owns and operates a rural telephone system in the territory contiguous to the village of Millstadt; and that by reason of the limited territory in which the company operates and the small number of subscribers served, it was necessary to put into effect a higher rate in order to produce sufficient revenue to meet the requirements of the utility.

The petitioner filed a statement of earnings and expenses for the year ending December 31, 1914, from which it appears that the only revenue derived is from the rental charges paid by the 65 subscribers and approximately \$35.00 per year from the St. Clair Farmers Mutual Telephone Company for the use, by that company, of certain facilities of the petitioner.

The total receipts for the year 1914 amounted to \$747 and the total operating expenses, without any allowance for depreciation, amounted to \$417.68. No allowance has been made for manager's salary and no dividends have been paid, and while the rate of \$1.25 will produce sufficient revenue to meet the requirements of the company, including the necessary allowance for depreciation and a reasonable allowance for manager's salary, it is not likely that any profits will accrue to be distributed in the form of a dividend to the stockholders.

In view of the circumstances under which the increased rate was put into effect and in the light of the facts presented in this case, an inventory and appraisal of the property of the petitioner was considered unnecessary.

It is, therefore, ordered, That the petitioner, Millstadt Telephone Company, of Millstadt, St. Clair County, Illinois, be, and the same is hereby, authorized to establish a uniform rate of \$1.25 per month for telephones in the village of Millstadt.

It is further ordered, That such rate shall become effective as of February 1, 1914, and shall be filed, posted and published by said petitioner as provided by Section 34 of an act entitled, "*An Act to Provide for the Regulation of Public Utilities.*"

By order of the Commission this fifth day of August, 1915, dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF THE LIBERTY
FARMERS TELEPHONE EXCHANGE FOR AUTHORITY TO
CHANGE RATES.

Case No. 3495.

Decided August 5, 1915.

**Substitution of Per Station Charge for Rural Service Subscribers in
Lieu of Line Charge Plus Per Station Charge Authorized.**

OPINION AND ORDER.

This is an application for authority to discontinue discriminatory rates or charges as between subscribers who are stockholders and subscribers who are not stockholders, and to adjust the charge for switching rural service subscribers. Application sets forth that the petitioner is a public utility engaged in the management and operation of a telephone exchange in the village of Liberty, Adams County, Illinois, and that as such public utility it is subject to the provisions of "*An Act to Provide for the Regulation of Public Utilities*," now in force in the State of Illinois.

Application further sets forth that the rates of the petitioner now in force and effect are as follows:

Rural line charge — lines owned by the subscribers...	\$20 00 per year
Switching rural service subscribers (per telephone) —	
telephone owned by the subscriber.....	2 00 per year
Switching telephones in the town of Liberty — sub-	
scriber owning line and all equipment.....	6 00 per year

Hearing in this case was held at Springfield, Illinois, May 19, 1915. *Clarence Pond*, secretary-treasurer of the Liberty Farmers Telephone Exchange, appeared on behalf of the petitioner. No one appeared objecting.

From the testimony presented at the hearing it appeared that the Liberty Farmers Telephone Exchange is an association of fifteen rural lines centering in the village of Liberty; that each of these lines is jointly owned and maintained by the subscribers whose telephones are connected therewith, each of whom owns and maintains his telephone

instrument; that the physical property of the petitioner consists of a switchboard in the village of Liberty and a toll line extending from Liberty to Quincy; that Liberty is an unincorporated village of about 400 inhabitants, and that the classification "town service" applies to six subscribers in the village who own and maintain their lines and instruments.

It further appeared that it is the purpose of the petitioner to discontinue the line charge of \$20.00 per year that applies to rural party lines and to establish a charge of \$3.00 per year per telephone for switching rural service subscribers. The charge for switching subscribers in the town of Liberty, that is, subscribers connected on individual lines, is to remain the same.

A charge for switching rural service subscribers fixed on a per station basis is more equitable than a charge fixed on a per line and per station basis, as the number of subscribers connected with each line varies. With the line charge of \$20.00 per year eliminated, the proposed switching charge of \$3.00 per year per telephone, considering the average number of subscribers per line, will not result in any increased charge to the rural service subscribers, and the revenue derived from switching such subscribers will not exceed the amount received under the present arrangement.

It is, therefore, ordered, That the line charge of \$20.00 per year and the switching charge of \$2.00 per year per telephone for rural service subscribers which the petitioner, Liberty Farmers Telephone Exchange, now has in effect shall be discontinued and a charge of \$3.00 per year per telephone for switching rural service subscribers, substituted in lieu thereof.

It is further ordered, That the change in rates herein authorized shall become effective as of September 1, 1915, and shall be filed, posted and published by said petitioner as provided by Section 34 of an act entitled, "*An Act to Provide for the Regulation of Public Utilities.*"

By order of the Commission, this fifth day of August, 1915, dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF WESTFIELD MUTUAL
TELEPHONE COMPANY FOR AUTHORITY TO CHANGE RATES.

Case No. 3596.

Decided August 5, 1915.

**Discrimination in Favor of Subscribers Owning Telephones Eliminated
— Discount for Advance Payment Authorized.**

OPINION AND ORDER.

Petitioner in this case is a public utility engaged in the management and operation of a rural telephone system in and around the village of Westfield, Clark County, Illinois, and at the direction of the Commission, on March 6, 1915, filed an application for authority to change rates in order to discontinue discriminations.

Petitioner had in force and effect a rate of \$6.00 per year for subscribers who own their telephones and a rate of \$12.00 per year for subscribers whose telephones are furnished by the company, and such rates being discriminatory and unlawful, application was made for authority to discontinue the rate of \$12.00 and establish a uniform rate of \$6.00 per year, and such change was authorized in an order* issued by the Commission on April 22, 1915.

On May 10, 1915, J. J. Hinckley, secretary of the Westfield Mutual Telephone Company, advised the Commission by letter, that the provisions of Conference Ruling No. 15,† *In the Matter of Rates and Charges Applicable to Subscribers Who Own Their Telephones*, was not fully understood by the officers of the company at the time application was filed, and that the authorized rate of \$6.00 per annum would not produce sufficient revenue to meet the requirements of the utility.

On May 20, 1915, the Commission in conference suspended the order* issued April 22, 1915, and granted leave to the Westfield Mutual Telephone Company to file amended application. Such amended application was filed

* Noted in Commission Leaflet No. 42, p. 49.

† See Commission Leaflet No. 37, p. 457.

July 6, 1915, and provides for the establishment of a uniform rate of \$9.00 per year, with a discount of \$1.50 per year if payment is made for a period of six months in advance.

It appears that it is the present practice of the company to collect rental charges in advance, and inasmuch as the discount will stimulate the prompt payment of rental charges and the amount of discount to be allowed is reasonable, such provision will be approved.

The proposed rate of \$9.00 per year is less than the regular schedule rate now charged subscribers classified as "renters" and, if proper service is furnished, there appears to be no reason to question the reasonableness of such rate.

It is, therefore, ordered, That the rate of \$12.00 per year that now applies to subscribers classified as "renters", as set forth in the application of the petitioner, Westfield Mutual Telephone Company, shall be discontinued and a rate of \$9.00 per year, with a discount of \$1.50 per year, provided payment is made for a period of six months in advance, shall be established in lieu thereof.

It is further ordered, That such rate shall become effective as of September 1, 1915, and shall be filed, posted and published by said petitioner as provided by Section 34 of an Act entitled, "*An Act to Provide for the Regulation of Public Utilities.*"

By order of the Commission, this fifth day of August, 1915, dated at Springfield, Illinois.

POTOMAC TELEPHONE COMPANY v. COON BROTHERS TELEPHONE COMPANY

Case No. 3720.

Decided August 5, 1915.

Discontinuance of Toll Rates and Restoration of Free Interexchange Service Ordered.

Applicant sought the restoration of free interexchange service between Armstrong and Penfield.

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For some years prior to January 1, 1915, free interexchange service had been furnished between Armstrong and Penfield in either direction, but at about that time the respondent company discontinued the furnishing of said free service from Armstrong to Penfield, claiming that in accordance with an agreement with the complainant's predecessors a toll charge should be made for such service, although service in the opposite direction between the same points was to be free.

Held: That without deciding whether the contract referred to is binding upon the complainant, the respondent had no right to discontinue free service summarily, for the discontinuance of such service was the alteration of a practice which resulted in an increased charge for service, and such increase is prohibited by the public utility act unless authorized by the Commission;

That as no authorization of the discontinuance of this free service had been granted by the Commission, the message rates should be discontinued and free interexchange service restored.

OPINION AND ORDER.

The complaint in this case sets forth that the complainant is a public utility operating telephone exchanges at Potomac, Armstrong and Collison, Illinois, with headquarters at Potomac; that the respondent, the Coon Brothers Telephone Company, is a public utility and within the jurisdiction of this Commission; that said respondent did on January 1, 1915, without the consent of complainant discontinue free telephone service between the villages of Armstrong and Penfield, Illinois; that for at least ten years prior to that time, free telephone service had been given between said two villages.

The respondent answered and denied that free telephone service to Penfield had been given to the Armstrong subscribers of the complainant or that said subscribers were entitled thereto. The respondent alleged that on January 1, 1915, it learned that complainant had been giving some of its subscribers at Armstrong free service with the Penfield subscribers of the respondent, and that it thereupon notified complainant to discontinue that practice.

The respondent contends that under certain agreements made by it with the predecessors of the complainant, which it contends are binding upon the complainant, the sub-

scribers of the respondent at Penfield are entitled to free telephone service to Armstrong, but that the complainant's subscribers at the latter point are to pay toll for each telephone call to Penfield.

A hearing was held before the Commission on June 23, 1915. *Robert W. Daniels*, attorney, appeared for the complainant, and *Leslie J. Owen*, attorney, appeared on behalf of respondent.

From the evidence in this case, it appears that the complainant herein is a co-partnership consisting of Frank Samuel and Charles Jester; that said partnership has since about April 1, 1914, owned and operated a telephone system with local exchanges at Armstrong, Illinois, and other towns in that vicinity. The respondent owns and operates a telephone system in the territory west of that occupied by the complainant, with local exchanges at various points and with an exchange at Penfield, a village located about five miles west of Armstrong. The respondent owns the portion of this toll line that extends from Penfield to a point about one-half mile south of Armstrong. The complainant owns the remainder of the line. Since said toll line was constructed the subscribers of the respondent at Penfield have had free telephone service over said toll line with the telephone subscribers at Armstrong.

The principal question in this case is as to whether the Armstrong subscribers of the complainant are entitled to free service over said toll line with the Penfield subscribers of the respondent, or in other words, whether the respondent had the right in January, 1915, to discontinue telephone service between Armstrong and Penfield.

The evidence clearly shows and, in fact, the respondent admits, that since the Armstrong exchange has been owned and operated by the complainant, the latter subscribers at Armstrong have had free toll service over said line with the subscribers of the respondent at Penfield. The officers of the respondent company testified that they had no knowledge of that fact until it was brought to their attention about January 1, 1915. They then directed that complain-

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ant's subscribers no longer be given such free service. The mere fact that the officers of the respondent company may not have been aware of the free use of the line in question by the Armstrong subscribers of the complainant does not alter the fact that such practice existed for a number of years and that respondent's employees had actual knowledge of that fact. Such knowledge on the part of such employees who were in actual charge of respondent's business must be held to be notice to the respondent of the existence of such free service. While there is some conflict in the testimony as to whether this free service was extended to the subscribers of the Armstrong exchange prior to the acquisition of said exchange by the complainant herein, yet from a careful consideration of the entire record, we are convinced that such free service did exist before the Armstrong exchange was purchased by the complainant, and that such free service had existed for seven or eight years prior to January 1, 1915.

The respondent contends that under a certain contract dated December 12, 1907, between the respondent and the complainant's predecessor, viz: J. H. Davis, Frank Samuel and the Fountain Creek Telephone Company, the respondent is entitled to a toll charge for all telephone calls made by the Armstrong subscribers of the complainant to Penfield. Complainant contends that it was not a party to this contract; that it never assumed the obligations agreed to therein by its predecessors; and that said contract is not binding upon complainant because by its express terms the contract is only binding upon the respective parties thereto and does not purport to bind the successors or assigns of either.

From the conclusions we have reached in this case, it will not be necessary to decide whether said contract is in fact binding upon the complainant.

It appearing that up to about January 1, 1915, and for a number of years prior thereto free toll service existed between Armstrong and Penfield, we now come to consider whether the respondent had the right to summarily discon-

tinue such service. Section 36 of the State Public Utilities Commission Act provides in part as follows:

"Unless the Commission otherwise orders, no change shall be made by any public utility in any rate or other charge or classification, or in any rule, regulation, practice or contract, relating to or affecting any rate or other charge, classification or service or in any privilege or facility, except after thirty days' notice to the Commission and to the public as herein provided. . . .

No public utility shall increase any rate or other charge, or so alter any classification, contract, practice, rule or regulation as to result in any increase in any rate or other charge, under any circumstances whatsoever, except upon a showing before the Commission and a finding by the Commission that such increase is justified."

No application was made to, or authority received from, this Commission by the respondent to discontinue free telephone service between the points in question. Assuming for the sake of argument that the contract referred to above gave the respondent the right to impose a toll charge on messages between Armstrong and Penfield, and assuming further that said contract became binding upon the complainant herein when it acquired said Armstrong exchange, we are unable to agree with respondent's contention that it had, under the facts and circumstances in this case, the right to discontinue free service and make a toll charge between the points above mentioned.

The discontinuance of free service between the points in question undoubtedly was an increase in a rate or the alteration of a practice which resulted in an increased charge for service within the meaning of said Section 36. This section of the Act could not be nullified by a private agreement of the parties to this case, if such agreement in fact exists. It follows that the respondent had no right to discontinue the free service in question.

It is, therefore, ordered, That the respondent, Coon Brothers Telephone Company, shall until the further order of this Commission continue to furnish free telephone service with its local telephone subscribers at Penfield to the subscribers of complainant's telephone exchange at Armstrong, Illinois.

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Ten days is considered sufficient time within which to comply with this order.

By order of the Commission this fifth day of August, 1915, dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF THE FARMERS
MUTUAL TELEPHONE ASSOCIATION OF IVESDALE, ILLINOIS,
FOR AUTHORITY TO CHANGE RATES.

Case No. 3763.

Decided August 5, 1915.

Discrimination in Favor of Stockholders Eliminated.

OPINION AND ORDER.

This is an application for authority to discontinue discriminatory rates or charges as between subscribers who are stockholders and subscribers who are not stockholders. Application sets forth that the petitioner is a public utility engaged in the management and operation of a telephone system in the village of Ivesdale, Champaign County, Illinois, and that as such public utility it is subject to the provisions of "*An Act to Provide for the Regulation of Public Utilities*," now in force in the State of Illinois.

Application further sets forth that the rates of the petitioner now in force and effect are as follows:

Stockholders' telephones	\$0 50 per month
Rented telephones	1 25 per month

Application is made for authority to change the rate that applies to subscribers who are stockholders, in order to discontinue the difference or discrimination in rates, and to establish a uniform rate of \$1.25 per month.

Conference Ruling No. 8* and other decisions heretofore made by this Commission provide that a stockholder can-

* See Commission Leaflet No. 31, p. 31.

not be given any greater or less or different rate than the rate charged other subscribers,* and the rate that the petitioner now has in effect for subscribers who are stockholders is discriminatory and unlawful.

It is, therefore, ordered, That the rate of 50 cents per month that applies to subscribers who are stockholders, as set forth in the application of the petitioner, Farmers Mutual Telephone Association, of Ivesdale, Champaign County, Illinois, shall be discontinued and the regular schedule rate of \$1.25 per month shall be applied to all subscribers without discrimination.

It is further ordered, That the rate herein authorized shall become effective as of August 1, 1915, and shall be filed, posted and published by said petitioner as provided by Section 34 of an act entitled, "*An Act to Provide for the Regulation of Public Utilities.*"

By order of the Commission this fifth day of August, 1915, dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF THE INTER-STATE
INDEPENDENT TELEPHONE AND TELEGRAPH COMPANY FOR
AUTHORITY TO ESTABLISH RATES.

Case No. 2274.

Decided August 19, 1915.

Increase in Rates in Accordance with Ordinance Authorized Upon Completion of Improvements.

OPINION AND ORDER.

The application of the Inter-State Independent Telephone and Telegraph Company sets forth that previous to

* Orders requiring the elimination of discrimination in favor of stockholders were issued in cases involving the following companies:

Andover Mutual Telephone Company. No. 3440. August 5, 1915.

Flanagan Telephone Company. No. 3532. August 5, 1915.

Ray and Rushville Mutual Telephone Company. No. 3767. August 19, 1915.

Augusta Mutual Telephone Company. No. 3879. September 2, 1915.

July 1, 1913, the petitioner secured the passage of certain ordinances in the villages of Hampshire, Mokena and Frankfort establishing certain rates for telephone service furnished by the petitioner in those places. These new rates are increases over the old rates, shown as follows:

	<i>Old Rates.</i>	<i>New Rates.</i>
<i>Hampshire:</i>		
Main line residence.....	\$1 00	\$1 50
Party line residence.....	1 00	1 50
<i>Mokena:</i>		
Main line business.....	1 50	2 00
Main line business.....	1 00	....
Party line business.....	1 00	2 00
Main line residence.....	1 00	1 50
Party line residence.....	1 00	1 50
<i>Frankfort:</i>		
Main line business.....	1 00	2 00
Main line residence.....	1 00	1 50
Party line residence.....	1 00	1 50

At the hearing held in this matter it appeared that the said ordinances were to become effective upon the completion of certain improvements to be made in the petitioner's plant and equipment in the several villages. Those improvements were completed subsequent to July 1, 1913, hence the increased rates could not be charged until after date of July 1, 1913, and the petitioner is therefore now asking the approval of these rates. It appears from statements filed since the hearing by the authorities of the villages of Hampshire, Mokena and Frankfort that all improvements have been made as required by the ordinances. The new rates are therefore the legal ordinance rates in effect in those villages.

The Commission does not deem it necessary at this time to make any finding as to the reasonableness of the rates authorized by those ordinances as hereinbefore set forth, but in view of all the circumstances it is of the opinion that the petitioner should be allowed to charge said rates.

It is, therefore, ordered, That the following schedule of rates may be charged by the Inter-State Independent Telephone and Telegraph Company for telephone service:

Hampshire:

Main line residence.....	\$1 50 per month
Party line residence.....	1 50 per month

Mokena:

Main line business.....	2 00 per month
Party line business.....	2 00 per month
Main line residence.....	1 50 per month
Party line residence.....	1 50 per month

Frankfort:

Main line business.....	2 00 per month
Main line residence.....	1 50 per month
Party line residence.....	1 50 per month

It is further ordered, That the above schedule of rates shall be posted and filed with this Commission according to law.

The Commission retains jurisdiction of the matter herein to make such other and further order on complaint or upon its own motion as at any time may be necessary.

By order of the Commission this nineteenth day of August, 1915, dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF THE KEYSFORT TELEPHONE COMPANY OF KEYSFORT, ILLINOIS, FOR AUTHORITY TO CHANGE RATES.

Case No. 3400.

Decided August 19, 1915.

**Discrimination in Favor of Subscribers Owning Telephones Eliminated
— Rates for Extension Bells Established — Additional Classification for Four-Party Metallic Service Not Authorized.**

Applicant sought authority to discontinue discriminatory rates in favor of subscribers owning and maintaining their telephones, to increase its switching rates from \$2.00 per year to \$4.00 per year and to establish rates for four-party metallic service and for extension bells.

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Held: That the discrimination in favor of subscribers owning their telephones should be eliminated;

That the proposed classification and rate for four-party metallic service was not justified since the system was operated as a grounded system and since there was no general demand for metallic line service;

That the establishment of a rate of \$6.00 per year for extension bells in connection with main line telephones was justified.

Increase in Switching Rates Authorized — Traffic Study Made.

To determine the reasonableness of the proposed rate for switching rural service subscribers, a three-day traffic study was made of all calls through the Keysport exchange. From this traffic study it appeared that approximately 87 per cent. of the total operating expense was chargeable to rural service subscribers. With a station development of one hundred and thirty-eight rural service subscribers this would amount to approximately \$2.50 per subscriber.

Held: That as 77 per cent. of the total development was rural, a somewhat greater profit from switching service was justified than if the utility was serving only a small number of rural service subscribers, and that a rate of \$3.00 per year was reasonable;

That as the same service was furnished to all rural service subscribers, including the subscribers of the Vandalia-Southwestern Telephone Company, all should be charged the same rate, regardless of the fact that there was an interchange of service between the Keysport and the Vandalia-Southwestern companies, for if the service of the Vandalia company was of greater value to the subscribers of the Keysport company than the service of the latter was to the subscribers of the former, the difference should be adjusted by the payment by the Keysport company of a reasonable compensation to the Vandalia company.

OPINION AND ORDER.

Application in the above entitled matter sets forth that the petitioner is a public utility engaged in the management and operation of a telephone system in the village of Keysport, Clinton County, Illinois; that certain rates now in force and effect are discriminatory and that the rate for switching rural subscribers is unprofitable.

The rates of the petitioner now in force and effect, as set forth in the application, are as follows:

Individual line telephones, grounded lines — all equipment owned and maintained by the company.....	\$18 00 per year
Individual line telephones, grounded lines — subscriber furnishing and maintaining the telephone.....	12 00 per year
Party line telephones, grounded lines.....	12 00 per year
Switching charge for rural subscribers who own and maintain their lines and telephones to the corporate limits of the village of Keysport.....	2 00 per year

Application is made for authority to discontinue the discriminatory rate that applies to subscribers who own and maintain their telephones and to establish the following schedule:

Individual line telephones, grounded lines.....	\$18 00 per year
Party line telephones, grounded lines.....	12 00 per year
Four-party line telephones, metallic circuit.....	18 00 per year
Extension bells in connection with main line telephones	6 00 per year
Switching charge for rural subscribers who own and maintain their lines and telephones to the corporate limits of the village of Keysport.....	4 00 per year

Hearing was held at Springfield, Illinois, June 1, 1915. *John L. Gunn*, manager, appeared for the petitioner. No one appeared objecting.

From the testimony presented at the hearing, it appeared that the petitioner was serving, on June 1, 1915, 178 subscribers, 40 of whom are located within the village of Keysport and 138 in the rural territory contiguous thereto. Of the 138 rural subscribers served, 63 are subscribers of the Vandalia-Southwestern Telephone Company, of Pittsburgh, Illinois, and are connected with the Keysport Telephone Company under a reciprocal arrangement between the Vandalia-Southwestern Telephone Company and the Keysport Telephone Company whereby the former pays to the latter a flat sum of \$100 per year for switching such subscribers. The other rural subscribers, 63* in number, own and maintain their lines and telephones and pay a switching charge of \$2.00 per year per subscriber.

The petitioner was not prepared to submit a statement of earnings and expenses at the time of the hearing, but it appeared from the testimony that the total revenue

*An error in computation is apparent.

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amounts to approximately \$375 per year and the total expenses, not including any allowances for depreciation, amount to approximately \$367 per year. It further appeared, that the policy of the company, with regard to expenditures, has been very conservative; that the switch-board is located in the residence of Mr. Gunn; that the exchange is managed and operated by himself and his family; that about \$30.00 per month, or \$360 per year, has been drawn out of the business as a salary for himself and the members of his family, and that this amount is properly chargeable to central office operating expenses.

While this charge to central office operating expense appears to be excessive inasmuch as the total operating expenses amount to only \$367 per year, it appeared that in making repairs to the plant Mr. Gunn has charged nothing for services. Furthermore, in the light of the facts presented in this case, an allowance of \$360 per year for central office operating expenses does not appear unreasonable.

In view of the fact that the petitioner is not seeking to increase the rates for telephones within the village of Keysport, an inventory and appraisal of the property is considered unnecessary.

The rate that applies to subscribers who own their telephones is discriminatory. The Commission has ruled (Conference Ruling No. 15)* that it is unlawful to grant any reduction from the regular rate on account of subscribers owning their telephones.† The above mentioned conference ruling also fixes the terms under which a telephone company may rent a telephone from a subscriber who owns the same.

The proposed classification and rate for four-party service metallic lines is not justified. The Keysport telephone exchange is operated as a grounded system, no metallic

* See Commission Leaflet No. 37, p. 457.

† Orders requiring the elimination of discrimination in favor of subscribers owning telephones were issued in cases involving the following companies:

Ray and Rushville Mutual Telephone Company. No. 3767. August 19, 1915.

Annapolis Telephone Exchange. No. 3836. August 19, 1915.

lines are in operation at this time and it does not appear that there is any general demand for metallic line service. Furthermore, the installation of a few metallic lines cannot materially raise the quality of the service in general above that of the service on grounded lines, and the proposed classification will not be approved.

In order to determine the reasonableness of the proposed rate for switching rural service subscribers, a "peg count" or traffic study was made of all calls handled through the Keysport exchange for a three day period and from this traffic study it appears that approximately 87 per cent. of the total traffic is chargeable to switching rural service subscribers. This is not an unreasonable proportion in view of the fact that approximately 77 per cent. of the total development is rural.

With total expenses chargeable to central office operating amounting to \$360 per year, the amount of such expense chargeable to rural traffic is \$306, which is 87 per cent. of the total central office operating expenses, which, apportioned among 138 rural service subscribers, is approximately \$2.50 per subscriber.

In view of the fact that 77 per cent. of the total development is rural, it appears that a somewhat greater profit from switching service is justified than if the utility was serving only a small number of rural service subscribers, in which case the value of the connection would probably offset any profit that might otherwise be derived from serving such subscribers. It appears, therefore, that in this case, a rate of \$3.00 per year for switching rural service subscribers is a reasonable rate. Neither the testimony presented at the hearing nor the traffic study justifies a rate of \$4.00 as proposed by the petitioner.

The subscribers of the Vandalia-Southwestern Telephone Company that are switched by the petitioner occupy relatively the same position as the rural service subscribers who own and maintain their lines and telephones. It appeared from the testimony that all rural subscribers receive the same service, and such being the case, there is no justification for any difference in rates. The fact that there

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is an interchange of service between the Keysport Telephone Company and the Vandalia-Southwestern Telephone Company does not justify a lower rate for the subscribers of the latter company. If the service of the Vandalia-Southwestern Telephone Company is of greater value to the subscribers of the Keysport Telephone Company than the service of the latter is to the subscribers of the former, as indicated by the reduced rate that applies to the subscribers of the Vandalia-Southwestern Telephone Company that are switched by the Keysport Telephone Company, this can be adjusted by the payment of a reasonable compensation to the Vandalia-Southwestern Telephone Company by the Keysport Telephone Company.

It is, therefore, ordered, That the petitioner, Keysport Telephone Company, shall discontinue the rates that it now has in force and effect and establish in lieu thereof the following schedule:

Individual line telephones.....	\$18 00 per year
Party line telephones.....	12 00 per year
Switching charge for rural service subscribers.....	3 00 per year
Extension bells in connection with main line telephones	6 00 per year

It is further ordered, That the rates herein authorized shall become effective as of September 1, 1915, and shall be filed, posted and published by said petitioner as provided by Section 34 of an act entitled, "*An Act to Provide for the Regulation of Public Utilities.*"

By order of the Commission, this nineteenth day of August, 1915, dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF THE EVANSVILLE
TELEPHONE COMPANY FOR AUTHORITY TO CHANGE RATES.

Case No. 3504.

Decided August 19, 1915.

Increase in Rates Authorized to Enable Company to Comply with Conference Ruling No. 15* and to Furnish Proper Service.

Applicant sought authority to increase certain of its rates in order to comply with Conference Ruling No. 15*.

*See Commission Leaflet No. 37, p. 457.

Applicant, which had been furnishing service in and around Evansville, had required its subscribers, except short term subscribers, to furnish and maintain their telephones. By Conference Ruling No. 15* the company was required to maintain the telephones owned by subscribers, pay a reasonable rental to the subscribers for the use of the instruments and furnish the instruments in all new installations. The present revenues were inadequate to meet these additional requirements. The proposed rates, after providing for the payment of rental to the subscribers for the use of their equipment and further providing a reserve for depreciation of 7 per cent., would leave approximately \$2.23 per station for maintenance.

Held: That the increase in rates should be authorized as the proposed increase in revenues will be required if proper service is to be furnished and if the plant is to be properly maintained.

OPINION AND ORDER.

The petitioner in this case is a public utility engaged in the management and operation of a telephone system in the village of Evansville, Randolph County, Illinois. The original application sets forth that the rates of the petitioner now in force and effect are as follows:

Business telephones	\$12 00 per year
Business telephones—short term.....	18 00 per year
Residence telephones	6 00 per year
Rural telephones	5 00 per year

The application further sets forth that all subscribers, except subscribers under the classification "business telephone—short term," own and maintain their telephones; that the rates now in force and effect are discriminatory, and that it is the desire of the petitioner to conform its rates, rules and classifications to the provisions of the law and the rulings of the Commission. Application is made for authority to increase the rate for each class of service \$1.60 per year, with the exception of the rate for "business telephones—short term," which is to remain the same.

Hearing was held at Springfield, Illinois, June 29, 1915, due notice of this hearing, as provided by law, having been given to the company, and to the president of the village board of Evansville, Illinois. *William M. Schuwerk*, at-

* See Commission Leaflet No. 37, p. 457.

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torney, and president of the Evansville Telephone Company, appeared for the petitioner. No one appeared objecting.

From the testimony presented at the hearing it appeared that the Evansville Telephone Company was organized with a view of furnishing telephone service to the public at the lowest possible cost; that in keeping with this plan each subscriber was required to furnish and maintain his telephone; that later, in response to a demand for service from parties who were located in the village temporarily, the petitioner established a rate for business telephones installed under short term contracts, which is higher than the rate charged subscribers who own their telephones; and that while the present plan has been in successful operation for about ten years, the petitioner can not comply with the provisions of the law and the rulings of the Commission and properly operate and maintain the plant with the revenue derived from the rates now in force and effect.

It further appeared that the provisions of Conference Ruling No. 15,* were not fully understood by the officers of the company at the time the proposed rates were agreed upon, and that if the company is required to maintain the telephones owned by the subscribers, pay a reasonable rental to the subscribers for the use of the instruments, and furnish the instruments in all new installations, the revenue under the proposed rates would not be sufficient to meet the requirements of the utility. Accordingly, the petitioner was granted leave to file an amended petition and the case continued.

Amended application was filed July 17, 1915. Hearing was set for July 20, but no appearances were made. The amended application sets forth that the present rates will not produce sufficient revenue to meet the requirements of the utility if it complies with the provisions of the law and the rulings of the Commission, and application is made for authority to put into effect the following schedule:

*See Commission Leaflet No. 37, p. 457.

Business telephones	\$18 00 per year
Residence telephones	12 00 per year
Rural telephones	9 00 per year

The amended application further sets forth that the board of directors of the Evansville Telephone Company caused a public meeting of the patrons of the said company to be called for July 10, 1915; that each subscriber was duly notified of such meeting; that notice of such meeting appeared in the Evansville Enterprise, a newspaper published in the village of Evansville, on Friday, July 9, 1915; that at said meeting at least 95 per cent. of the subscribers of the company were present; that the proposed rates were fully discussed; that all subscribers present were then and there publicly notified and informed that the application would be taken up and acted upon by the State Public Utilities Commission on July 20, 1915, at 10 o'clock A. M., at Springfield, Illinois, when and where all objections to the same might be registered.

In connection with the amended application, petitioner filed, under oath, statements of station development, assets and liabilities, and earnings and expenses. According to the statement of station development, the utility was serving, on July 5, 1915, 121 subscribers, 60 of which are town subscribers, and 61 rural subscribers. The total receipts for the twelve months ending June 30, 1915, amounted to \$1,141.20, \$428.85 of which represents gross toll revenue, and the total operating expenses, without any allowance for depreciation, amounted to \$822.97; taxes amounted to \$13.78.

The application of the proposed rates to the number of subscribers reported as of July 1, 1915, would result in an increase in revenue of \$604 per year. It appeared from the testimony presented at the hearing on June 29, that the petitioner proposed to pay to the subscribers who own their telephones a rental of \$1.60 per year, as provided by Conference Ruling No. 15,* and the payment of this rental will represent an increased expense of approximately \$195

*See Commission Leaflet No. 37, p. 457.

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per year, leaving a balance of about \$410 per year for the maintenance of telephone instruments and depreciation. The estimated value of the property is about \$2000, and depreciation at 7 per cent. on this valuation is \$140 per year, leaving a balance of \$270 for the maintenance of telephones, which is an average of about \$2.23 per station.

The expense of proper maintenance of telephone instruments, particularly on rural lines, constitutes a considerable part of the total expense of furnishing service, and the proposed increase in revenue will be required if proper service is furnished and the plant properly maintained.

It is, therefore, ordered, That the Evansville Telephone Company, of Evansville, Randolph County, Illinois, be, and the same is hereby, authorized to discontinue the rates that it now has in force and effect and establish the following schedule:

Business telephones	\$18 00 per year
Residence telephones	12 00 per year
Rural telephones	9 00 per year

It is further ordered, That the schedule of rates herein authorized shall become effective as of September 1, 1915, and shall be filed, posted and published by said petitioner as provided by Section 34 of an act entitled, "*An Act to Provide for the Regulation of Public Utilities.*"

By order of the Commission, this nineteenth day of August, 1915, dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF FORREST CITY TELEPHONE COMPANY FOR AUTHORITY TO CHANGE RATES.

Case No. 3604.

Decided August 19, 1915.

**Discrimination in Favor of Subscribers Owning Telephones Eliminated
— Rate for Business Telephones Established — Discount for
Prompt Payment Approved — Increase in Rates
Equal to Amount of Discount Authorized.**

Applicant sought authority to discontinue the discriminatory rates that applied to subscribers who owned their telephones, to establish a

rate of \$21.00 per year for business telephones and to increase all other rates, with the exception of the rates for switching rural service subscribers, nominally 25 cents per month and allow a discount of that amount on all bills paid monthly on or before the fifteenth day of the current month in which the service is rendered, claiming that the present rates did not produce sufficient revenue to place the utility on a sound financial basis and enable it to pay its employees full and fair compensation for their services and to pay all of its operating expenses, provide an adequate reserve for depreciation, and pay to its stockholders a fair return on the investment.

Held: That the practice of furnishing service at a lower rate to those subscribers who own their telephones is an unlawful discrimination and should be discontinued.

That an increase in rates is necessary since the present revenues are not adequate to meet the requirements of the utility in view of the increase in expenses by reason of the employment of an additional operator, increase in operators' and manager's salaries and increased taxes.

That the proposed rates, including the rate of \$21.00 per year for business service, are not unreasonable.

That as the utility has experienced difficulty in making collections, a discount for payment before the fifteenth of the current month is good telephone practice, and while a discount on a percentage basis is considered as being more equitable as a general rule, in the present case a flat discount rate is justified.

OPINION AND ORDER.

The petitioner in this case is a public utility engaged in the management and operation of telephone exchanges at Forrest City and San Jose. Application sets forth that the rates of the petitioner now in force and effect are as follows:

APPLICATION OF FORREST CITY TELEPHONE Co. 1101

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Forrest City Exchange.

Business telephones	\$12 00 per year
Business telephones — subscriber owning the telephone.	6 00 per year
Residence telephones	12 00 per year
Residence telephones — subscriber owning the telephone	5 00 per year
Rural party line telephones.....	12 00 per year
Switching rural telephones — party lines — subscribers owning and maintaining line to village limits.....	4 00 per year
Switching rural telephones — individual lines — sub- scriber owning and maintaining line to village limits.	5 00 per year

San Jose Exchange.

Business telephones	12 00 per year
Business telephones — subscriber owning the telephone.	6 00 per year
Residence telephones	12 00 per year
Residence telephones — subscriber owning the tele- phone	6 00 per year
Rural telephones — individual line business service....	24 00 per year
Rural party line telephones.....	12 00 per year
Rural party line business telephones.....	12 00 per year
Rural party line telephones — subscriber owning the telephone	6 00 per year
Switching rural telephones — party lines — subscribers owning and maintaining lines.....	6 00 per year

Application further sets forth that it is discriminatory and unlawful to allow subscribers who own their telephones a lower rate than the rate charged subscribers whose telephones are furnished by the company; that it is discriminatory not to charge a higher rate for business telephones than for residence telephones; that it is necessary, in order to secure the prompt payment of rental charges, to allow a discount of 25 cents per month, or \$3.00 per year, if rental charges are paid monthly in advance; and that the present rates do not produce sufficient revenue to place the utility on a sound financial basis and enable it to pay its employees full and fair compensation for their services and to pay all of its operating expenses, provide an adequate depreciation fund, and pay to its stockholders a fair return on the investment.

Application is made for authority to discontinue the discriminatory rates that apply to subscribers who own their

telephones; to establish a rate of \$21.00 per year for business telephones and to increase all other rates, with the exception of the rates for switching rural service subscribers, nominally 25 cents per month and allow a discount of that amount on all bills paid monthly on or before the fifteenth day of the current month in which the service is rendered.

Hearing was held at Springfield, Illinois, May 19, 1915, due notice of the date of hearing having been given, as provided by law, to the mayor of each of the cities in which petitioner operates. *Ben B. Boynton*, attorney, appeared for the petitioner. No one appeared objecting.

From the testimony presented at the hearing, it appeared that the utility had on May 1, 1915, about 456 telephones in service, 183 of which are connected with the Forrest City exchange and 273 with the San Jose exchange; that the greater part of the development at both exchanges is rural; that about half of the subscribers in the village of Forrest City and a few subscribers in the village of San Jose own their telephones; also that a few rural subscribers connected with each exchange own their telephones, and that a reduction of 50 per cent. from the rural schedule rate for the class of service furnished applies to such subscribers.

It further appeared that the utility is facing certain increases in expenses by reason of the employment of an additional operator at San Jose, increases in operators' salaries and manager's salary, and increased taxes, and that the present rates do not produce sufficient revenue to meet the requirements of the utility.

The petitioner submitted at the hearing a statement of assets and liabilities and earnings and expenses of the utility for the year ending December 31, 1914. According to this statement, the capital stock of the company is \$20,000, \$11,300 of which is outstanding, and the value of the physical property is estimated at \$15,000. It appears that the earnings for the year ending December 31, 1914, amounted to \$4660 and that for the same period expenses amounted to \$3299, leaving a net revenue of \$1361. No allowance was

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made for depreciation and the allowance for manager's salary was only \$10.00 per month.

It further appeared that the utility has experienced considerable difficulty in making collections, particularly at San Jose, and that on May 1, 1915, about \$2000 in rental and toll charges were outstanding. It was admitted that the petitioner had been negligent in the matter of collections, but it also appeared that subscribers were slow in making payments, particularly rural subscribers.

The statement in the petition with reference to the rate for business telephones apparently is due to a misunderstanding of the ruling of the Commission regarding the classification of telephone subscribers. The Commission has not ruled that it is discriminatory and unlawful to charge the same rates for business telephones as for residence telephones. Paragraph " d " of Conference Ruling No. 13* reads:

" The classification of telephone subscribers into business and residence subscribers with higher rates for the former than for the latter is reasonable and permissible: (1) because of the greater cost of providing business service and (2) because it is a well established principle that a lower residence rate is necessary in order that a sufficiently large number of subscribers may be secured to make the telephone valuable to all users."

The rate that now applies to subscribers who own their telephones, is, of course, discriminatory and unlawful. The Commission has ruled, Conference Ruling No. 15,† that it is unlawful to grant any reduction from the regular rate on account of the subscriber owning the telephone. The above mentioned conference ruling also fixes the terms under which a telephone company may rent a telephone from a subscriber who owns the same.

The proposed rate of \$21.00 for business telephones, with a discount of 25 cents per month if paid monthly in advance, appears to be a reasonable rate. Fourteen subscribers of the Forrest City exchange and twenty-eight subscrib-

*See Commission Leaflet No. 34, p. 1008.

†See Commission Leaflet No. 37, p. 457.

ers of the San Jose exchange will be affected by this increase, and the net increase in revenue, provided all subscribers take advantage of the discount feature, will amount to \$252 per year. The increase in revenue that will result from the change in rates that apply to subscribers who own their telephones, will amount to \$399 per year, making the total increase in revenue \$651 per year, which is approximately the amount of the increased expenses that are to be met by the utility.

A discount to apply on bills paid on or before the fifteenth of the current month appears to be good telephone practice, as it tends to diminish collection expense and losses from unpaid rentals, and in this case a discount of 25 cents per month appears to be reasonable. While a discount applied on a percentage basis is regarded as being more equitable, in the present instance a flat discount rate appears to be justified.

The Commission is of the opinion that if proper service is furnished, the proposed rates will not be unreasonable, and while there is nothing in the record in this case with regard to service, however, the company is under the general obligation to comply with the rules established by the Commission governing telephone service.

It is, therefore, ordered, That the petitioner, Forrest City Telephone Company, be, and the same is hereby, authorized to discontinue the rate schedule that it now has in force and effect at Forrest City and San Jose and substitute therefor the following schedules:

APPLICATION OF FORREST CITY TELEPHONE CO. 1105

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Forrest City Exchange.

Business telephones	\$21 00 per year
Residence telephones	15 00 per year
Rural party line telephones.....	15 00 per year
Switching charge for rural service subscribers.....	4 00 per year

A discount of 25 cents per month will apply to the above rates, with the exception of the rate for switching rural service subscribers, if rental charges are paid monthly on or before the fifteenth day of the current month in which the service is rendered.

All switching service charges are payable annually, in advance, and no switching service charge for any one line shall amount, in the aggregate, to less than \$12.00 per year.

San Jose Exchange.

Business telephones	\$21 00 per year
Residence telephones	15 00 per year
Rural individual line telephones—business service...	27 00 per year
Rural party line telephones—business service.....	21 00 per year
Rural party line telephones.....	15 00 per year
Switching rural service subscribers.....	6 00 per year

A discount of 25 cents per month will apply to the above rates, with the exception of the rate for switching rural service subscribers, if rental charges are paid monthly on or before the fifteenth day of the current month in which the service is rendered.

All switching service charges are payable annually, in advance, and no switching service charge for any one line shall amount, in the aggregate, to less than \$12.00 per year.

It is further ordered, That the schedules herein authorized shall become effective as of September 1, 1915, and shall be filed, posted and published by said petitioner as provided by Section 34 of "*An Act to Provide for the Regulation of Public Utilities.*"

By order of the Commission, this nineteenth day of August, 1915, dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF THE CHESTERFIELD
TELEPHONE AND TELEGRAPH COMPANY FOR AUTHORITY
TO CHANGE RATES.

Case No. 3682.

Decided August 19, 1915.

**Pole Contact Charge in Addition to Monthly Rate in Lieu of Annual
Flat Charge in Addition to Monthly Rate Authorized for
Individual Line Rural Service Subscribers.**

Applicant sought authority to change its rates for rural subscribers on individual lines.

Applicant had been serving three rural subscribers on individual lines at a rate of \$1.00 per month plus an additional charge of \$1.00 per year. These subscribers, who were located at various distances from the exchange, owned the wire connecting with the said exchange but the applicant owned the poles and maintained both the poles and the wires.

Applicant sought authority to discontinue its present charge and to establish a rate applicable to all present or future individual line rural subscribers of \$1.00 per month plus 5 cents per pole contact, based on the number of poles between the petitioner's exchange and the telephone of each of such subscribers.

Held: That the present charge to the three individual line rural subscribers is discriminatory in that individual line rural service at the rate enjoyed by these three subscribers is not open to other subscribers of the petitioner and could not be extended generally at the rate now in force to all subscribers without it becoming unduly burdensome to the company.

That the Commission is not prepared to lend approval to the plan proposed by the applicant, but under the peculiar facts of this case the change proposed appears to be an equitable solution of the question presented, and as to this particular case it should be approved.

OPINION AND ORDER.

The application in this case sets forth that the petitioner is a public utility engaged in the management and operation of a telephone system with its principal place of business at Chesterfield, Macoupin County, Illinois; that it owns and operates a telephone exchange at Rockbridge, Illinois, and seeks authority to change certain of its rates at said Rockbridge exchange in order to eliminate certain discriminations.

The present rates applicable to its subscribers at said point are as follows:

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Party line telephones.....	\$1 00 per month
Individual line telephones.....	1 00 per month
	plus an additional charge of \$1.00 per year.

A hearing was held before the Commission in this case on May 18, 1914. *W. J. Finch*, president of the Telephone company, appeared on behalf of the petitioner. No one appeared objecting.

From the testimony presented in this case it appears that the petitioner is now furnishing telephone service to its village subscribers at Rockbridge, and also to its rural subscribers connected with said exchange, at a rate of \$1.00 per month. It also appears that there are 3 rural subscribers on individual lines connected with petitioner's exchange. One of said subscribers is located about one mile, (21 poles); one, about one and one-fourth miles (49 poles); and the other, about two and one-fourth miles (55 poles) from the Rockbridge exchange.

The wire connecting each of said subscribers to said exchange is owned by the subscribers, but the petitioner owns and maintains the poles on which said wires are strung and also maintains the wires. In addition to a rate of \$1.00 per month, each of said 3 subscribers are charged \$1.00 per year.

The petitioner contends that the above charge to the latter subscribers is not compensatory and that it is discriminatory in that the subscribers are located at various distances from the exchange and that they enjoy a service which cannot be extended to other subscribers on the same basis.

The petitioner seeks authority to discontinue the present charge to the 3 rural subscribers in question and to make a rate applicable to all present or future individual rural subscribers, to be open to all subscribers, of \$1.00 per month plus a yearly charge of 5 cents per pole contact based on the number of poles between petitioner's exchange and the telephone of each of such subscribers. On this basis the

present individual rural subscribers would each pay a rate of \$12.00 per year plus \$1.05, \$2.45 and \$2.75, respectively, or a total charge of \$13.05, \$14.45 and \$14.75 per year, respectively.

The Commission is of the opinion from a careful consideration of this case, that the present charge to the 3 individual rural subscribers in question is discriminatory for the reason that individual line rural service at the rate enjoyed by the 3 subscribers above mentioned is not open to the other subscribers of the petitioner, and it is quite apparent that such service could not be extended generally to all subscribers alike at the rate now in force without it becoming unduly burdensome to the company. We are not prepared to lend our approval to the basis or plan proposed by the petitioner. However, under the peculiar facts in this case, the change proposed appears to be an equitable solution of the question presented, and as to this particular case it should be approved.

It is, therefore, ordered, That the petitioner, the Chesterfield Telephone and Telegraph Company, shall discontinue its present schedule of rates at its Rockbridge exchange, and shall substitute therefor the following rates:

Party line telephones.....	\$1 00 per month
Individual line telephones, where the wire is owned by the subscriber but the poles are owned, and the poles and wires are maintained, by the telephone company.	1 00 per month plus a charge of 5 cents per year per pole between the telephone exchange and the subscriber's premises.

The above change in rates shall be filed, posted and published as provided by law and shall become effective from and after September 1, 1915.

By order of the Commission this nineteenth day of August, 1915, dated at Springfield, Illinois.

ASSUMPTION MUTUAL TELEPHONE COMPANY v. RECEIVERS,
CENTRAL UNION TELEPHONE COMPANY AND ASSUMPTION
TELEPHONE COMPANY.

Case No. 3689.

Decided August 19, 1915.

**Establishment of Physical Connection Between Exchanges of Com-
peting Local Companies in Order to Provide Indirect Con-
nection for Toll Service Ordered — Principle of
Additional Protective Charge Recognized.**

Complainant sought the establishment of physical connection between its lines and the lines of the Central Union Telephone Company at Assumption.

The complainant and the defendant Assumption Telephone Company were operating competing exchanges at Assumption. The defendant Central Union Telephone Company was engaged in long distance telephone service and connected at Assumption with a switchboard of the Assumption Telephone Company. The Central Union company refused to make connection with the switchboard of the complainant at Assumption or to accept and transmit messages from complainant's lines when routed via the Christian County telephone to Taylorville where the Central Union had a connection with the Christian County company.

Complainant desired that the Central Union company should connect with its exchange one of the two Central Union lines which extended from Pana to Assumption and both of which were at present connected with the exchange of the Assumption Telephone Company.

The Central Union company did not oppose the establishment of a physical connection provided it was made by means of a trunk line between the switchboard of the applicant and that of the Assumption Telephone Company, but objected to connecting directly with two exchanges at Assumption, maintaining that to avoid delays in handling calls, incorrect reports to patrons and errors in toll charges, all business originating or terminating at Assumption should pass through one channel.

Held: That public convenience and necessity require a physical connection in order that the subscribers of the applicant may have toll service, that such a connection is practicable, would not impair the service of either company and would not seriously interfere with or jeopardize private rights.

That a physical connection for toll service should be established between the exchange of the complainant and that of the Assumption Telephone Company;

That the Assumption Telephone Company, as a protective measure against loss of subscribers as a result of the establishment of this connection, should charge a reasonable amount for the use of its facilities;

That the terms of said connection agreement should be fixed by the parties, but that in case an agreement cannot be reached, the Commission by supplemental order will fix the terms.

OPINION AND ORDER.

This case arises from an informal complaint filed with the Commission by the Assumption Mutual Telephone Company, alleging refusal on the part of the Assumption Telephone Company to establish a physical connection with the lines of the complainant for toll service. The Commission made an effort to adjust the complaint informally and suggested a plan of settlement, but the Assumption Telephone Company was not disposed to give the matter any consideration and subsequently a formal complaint was filed by the Assumption Mutual Telephone Company.

The complaint represents that the complainant is a public utility engaged in the operation and management of a telephone system in and around the city of Assumption; that the Assumption Telephone Company also is a public utility engaged in the operation and management of a telephone system in and around the city of Assumption; that the Receivers, Central Union Telephone Company are engaged in the handling of long distance telephone service from the city of Assumption, and that by virtue of a contract between the Assumption Telephone Company and the Central Union Telephone Company, the switching service of the said Receivers, Central Union Telephone Company is performed by the Assumption Telephone Company.

The complaint further represents that the complainant has a large amount of telephones in the city of Assumption and the rural territory contiguous thereto, to-wit, 300 telephones in the city and approximately 500 telephones in the country, with a complete equipment for the carrying on of a local and long distance telephone business; that application was made to the defendants to receive, transmit and deliver messages or conversations from the subscribers of the complainant over the lines of said defendants; that the defendants refused to enter into any arrangements for the exchange of messages between the lines of the complainant and the lines of said defendants, and that such refusal con-

stitutes a violation of Section 44 of the "*Act to Provide for the Regulation of Public Utilities*" now in force in the State of Illinois.

The defendants, in their answer, deny that public convenience and necessity require the establishment of a physical connection between the lines of the complainant and the lines of the defendant, and aver that the Assumption Telephone Company has expended large sums of money in installing and maintaining adequate facilities for the handling of local and long distance business in the city of Assumption and over the toll line system of the Central Union Telephone Company; that the establishment of the connection sought by the complainant would result in an impairment of the investments of the defendant Assumption Telephone Company; that the long distance or toll business originating at Assumption does not produce sufficient revenue to enable the defendants to maintain efficient long distance toll service if said revenue is divided between the Assumption Telephone Company and the complainant; that the complainant's system is a grounded system, giving poor and inefficient service, and that the long distance toll service would be greatly impaired if the physical connection sought should be established.

Hearing was held at Springfield, Illinois, May 5, 1915. *Leslie J. Taylor*, of *Taylor and Taylor*, attorneys, appeared for the complainant. *Ben B. Boynton*, attorney, appeared for the defendants.

It appeared from the testimony presented at the hearing that the Assumption Telephone Company, hereinafter referred to as the Assumption company operates a telephone exchange in the city of Assumption, serving about 250 subscribers, a few of which are rural subscribers; that the Assumption company has physical connection with the Christian County Telephone Company, of Taylorville, which operates an extensive telephone system in Christian County, by means of a toll line owned jointly by the two companies extending from Assumption to Taylorville; that the Central Union Telephone Company, hereinafter referred to as the Central Union company, has two copper

metallic toll lines extending from Pana to Assumption, both of which are connected into the switchboard of the Assumption company, and that by means of such lines subscribers of the Assumption company have access to the toll line system of the Central Union company, which is a part of the Bell system, and its connecting companies.

It further appeared that the Assumption Mutual Telephone Company, hereinafter referred to as the Mutual company, also operates a telephone exchange in the city of Assumption, serving about 300 subscribers in the city and about 500 subscribers in the rural territory contiguous thereto; that the Mutual company has toll line connections with the Christian County Telephone Company, of Taylorville, and the Decatur Home Telephone Company, of Decatur, an independent company operating in opposition to the Central Union company at Decatur; that although the Central Union company has connection with the Christian County Telephone Company and adequate facilities for the handling of toll business with the city of Taylorville, it refuses to accept any messages from the Mutual company routed via Taylorville, and that by reason of the limited toll line facilities of the Mutual company, its subscribers are unable to communicate with many points in the immediate vicinity of Assumption and with distant points reached only over the toll line system of the Central Union company.

It was contended by the Assumption company that it has expended large sums of money in the development of a local exchange system in the city of Assumption and in providing facilities for the handling of long distance business with the Central Union company; that it was the first company to build and operate a telephone exchange in the city of Assumption and has adequate facilities for the furnishing of an efficient and satisfactory service to the public; that a connection between the lines of the Assumption company and the Central Union company has existed for a number of years and is the only connection that the Central Union company has ever had in the city of Assumption; that a large number of the telephones of the Mutual com-

pany in the city of Assumption are duplicates; that with few exceptions, every business house in the city has the service of the Assumption company, and that the establishment of a physical connection between the lines of the Assumption company and the lines of the Mutual company or between the lines of the Mutual company and the toll lines of the Central Union company, would result in loss of subscribers and irreparable injury to the Assumption company.

It was contended by the complainant that its entire system is in good physical condition; that while the rural lines are grounded, a greater part of the lines in the city of Assumption are metallic; that the local exchange service and such long distance service as it is now able to furnish is entirely satisfactory to its subscribers; that many people in the city of Assumption and the rural territory contiguous thereto are deprived of long distance service by reason of the refusal of the Assumption company and the Central Union company to establish physical connection with the lines of the complainant; that public convenience and necessity demand and require the establishment of a connection between the lines of the complainant and the toll line system of the Central Union company, and that public convenience would properly be served through the Central Union company connecting one of its Pana-Assumption toll lines with the switchboard of the Mutual company.

The Central Union company does not oppose the establishment of a physical connection, provided it is made by means of a trunk line between the switchboard of the Assumption company and the switchboard of the complainant. A. J. Parsons, commercial superintendent of the Central Union company, testifying as an expert on behalf of the Assumption company, stated that it is very desirable that all toll business originating and terminating at Assumption should come through one channel; that if two routes were used, delays would occur in the handling of calls, incorrect reports would be made to the patrons, and errors would likely occur in making toll charges.

From a careful consideration of the testimony presented

at the hearing and the briefs filed and arguments made, it appears that many users of telephone service in the city of Assumption and the rural territory contiguous thereto are unable to transmit messages to, and communicate with, distant points by reason of the divided telephone service in the city of Assumption and the limited toll line facilities of the Mutual company.

It further appears that the Assumption company has a right of priority in the connection with the toll line system of the Central Union company; that such right should be recognized and protected, and that the efficiency of the service at Assumption and at distant points covered by the toll line system of the Central Union company and its connecting companies would be impaired if any change were made in the arrangement of the two toll lines extending from Pana to Assumption and connected with the switchboard of the Assumption company.

In considering applications for physical connection between the lines of two competing companies, the Commission has held that the facts must show clearly that public convenience and necessity demand and require a physical connection; that the establishment of such connection is practicable and would not impair the service of either company and that it would not seriously interfere with, or jeopardize, private rights, and a lengthy discussion of these conditions in connection with this case is unnecessary.

In the light of the facts presented in this case, the Commission is of the opinion that a physical connection should be established between the switchboards of the Assumption Mutual Telephone Company and the Assumption Telephone Company in the city of Assumption for toll service.

The testimony clearly shows that the Assumption company will suffer a loss of subscribers if a physical connection is made between the lines of the Mutual company and the Central Union company unless some protective measure is applied. If the connection is made by means of a trunk line between the switchboard of the complainant and the Assumption company, the facilities of the Central Union company need not be disturbed.

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It would be unlawful for the Central Union company to charge a different rate for toll service rendered to the subscribers of the complainant than it charges for service to the subscribers of the Assumption company, but the Assumption company may charge a reasonable amount for the use of its facilities, which will protect it against injury from such connection.

The law provides that the companies shall agree upon the terms, and in case an agreement cannot be reached, the Commission shall fix the terms. It is not necessary, therefore, for the Commission to fix the terms in this order.

It is, therefore, ordered, That the Assumption Telephone Company and the Assumption Mutual Telephone Company make such physical connection between their exchanges in the city of Assumption as is required for the furnishing of toll service over the lines of the Central Union Telephone Company and its connecting companies to the subscribers of the Assumption Mutual Telephone Company, and that such toll service be as complete as is furnished to the subscribers of the Assumption Telephone Company.

It is further ordered, That the cost of making such connection shall be borne by the Assumption Mutual Telephone Company.

Sixty days is deemed a reasonable time within which the companies shall comply with this order.

By order of the Commission, this nineteenth day of August, 1915, dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF THE CORDOVA TELEPHONE COMPANY FOR AUTHORITY TO CHANGE RATES.

Case No. 3299.

Decided August 25, 1915.

Increase in Rates Authorized.

OPINION AND ORDER.

The petitioner in this case is a public utility engaged in the management and operation of a rural telephone sys-

tem in and around the village of Cordova, Rock Island County, Illinois. Application sets forth that the petitioner has in effect a rate of \$5.00 per annum for all subscribers; that the revenue derived from this rate is not sufficient to meet the requirements of the company; and that a rate of \$9.00 per year should be established.

Hearing was held at Chicago, Illinois, June 22, 1915. *C. H. George*, attorney, appeared for the petitioner. No one appeared objecting.

From the testimony presented at the hearing it appeared that the Cordova Telephone Company is a so-called mutual or co-operative company, unincorporated; that it was organized primarily for the purpose of serving the convenience of its members; that it is serving approximately 120 subscribers, all of whom are stockholders; that each subscriber owns and maintains his telephone and a portion of the line connecting such telephone; that about 20 subscribers are located in the village of Cordova and the balance in the rural territory contiguous thereto; and that all subscribers are connected on party lines, there being no difference in the service furnished the subscribers in the village of Cordova and the rural subscribers.

It further appeared that on January 1, 1914, a rate of \$9.00 per year was established; that bills were issued and collections made at this rate for the first half of the year 1914; that subsequently it came to the attention of the officers of the company that it was necessary that such increase in rates be approved by the Commission; and that the rate of \$5.00 per year was again put into effect and collections made for the last half of 1914 at this rate.

The petitioner filed a statement of earnings and expenses for the year 1914, from which it appears that with a rate of \$9.00 per year in effect for the first half of 1914 and a rate of \$5.00 per year in effect for the last half of the year 1914, the total revenue amounted to \$774.66 and the total expenses \$729.59.

It appeared from the testimony that the policy of the company, with regard to expenditures, has been conservative, but that the revenue has been insufficient to meet all

factors of expense; that because of insufficient revenue it has been necessary, from time to time, to make special assessments against the stockholders; that certain repairs to the physical property are necessary; that the utility has no funds with which to meet the expense of such repairs; and that the stockholders have agreed that the rate of \$9.00 per year is necessary in order to provide sufficient revenue to meet the requirements of the company.

In the light of the facts presented in this case it appears that the proposed rate of \$9.00 per year is reasonable and that such rate will not produce any revenue in excess of what is required by the utility for the proper operation and maintenance of the telephone system.

It is, therefore, ordered, That the petitioner, Cordova Telephone Company, be, and the same is hereby, authorized to establish a rate of \$9.00 per year for party line telephones, such rate to become effective as of September 1, 1915.

It is further ordered, That the rate herein authorized shall be filed, posted and published by said petitioner as provided by Section 34 of "*An Act to Provide for the Regulation of Public Utilities.*"

By order of the Commission, this twenty-fifth day of August, 1915, dated at Springfield, Illinois.

WAYNE COUNTY MUTUAL TELEPHONE COMPANY AND BUSINESS MEN'S COMMERCIAL CLUB OF FAIRFIELD, ILLINOIS, v. COMMERCIAL TELEPHONE AND TELEGRAPH COMPANY.

Case No. 3514.

Decided August 25, 1915.

**Certificate of Public Convenience and Necessity to Invade Occupied Territory Where Service of Occupying Company is Inadequate Not
Granted — Establishment of Physical Connection Between Exchanges of Local Company and of
Rural Company Ordered.**

Petitioner sought a certificate of public convenience and necessity to install and operate a telephone exchange and system in Fairfield, claiming

that the service at present rendered there by the defendant was insufficient, that the defendant's facilities were inadequate and that the rates charged were unreasonable.

The Wayne County Mutual Telephone Company was a corporation made up chiefly of former rural subscribers of the defendant company who because of the inadequate and unsatisfactory service had found it necessary to discontinue their connections with the defendant and to install a switchboard near the corporate limits of Fairfield. The company proposed to install and operate an exchange within the city of Fairfield, such exchange to be operated on a so-called mutual plan, and also proposed to extend the service to many points in Wayne County and to adjoining counties through certain reciprocal arrangements with other so-called mutual telephone companies.

Aside from the poor quality of the service furnished by the defendant the existing dissatisfaction was due largely to the inability of the subscribers of the defendant to communicate with rural subscribers, i. e., with subscribers of the applicant, a condition which had resulted from the action of the rural subscribers in discontinuing connection with the defendant's exchange.

Held: That where service is inadequate but no steps have been taken to invoke the power of the Commission for the correction of such inadequacy, the proper remedy is not the granting of permission to a new company to enter the field;

That the Commission will not order the Mutual company to cease operating its switchboard although the rural subscribers connected therewith would be better served by reconnecting their lines with the exchange of the defendant;

That as intercommunication between the subscribers of the defendant and those of the Mutual company is essential to the users of telephone service in Fairfield and the rural territory contiguous thereto a physical connection should be established;

That the decision on the question of the issuance of a certificate of public convenience and necessity should be reserved;

Ordered, That the defendant make such changes and improvements in its physical property in the city of Fairfield as may be necessary to furnish adequate and efficient service to its subscribers and the general public, such improvements to be made within four months;

That the defendant and the applicant make such physical connection between their switchboards as is required for the furnishing of toll service and local service, including rural service, to the subscribers of each company.

OPINION AND ORDER.

The petition in this case represents that the defendant, Commercial Telephone and Telegraph Company, a cor-

poration, with its principal place of business at Olney, Illinois, owns and operates a telephone system in the city of Fairfield; that such system consists of an antiquated property and is in a bad state of repair; that the equipment is obsolete and the property inadequate; that the defendant does not maintain the telephone service in a manner justly and reasonably due the patrons of said system; that the patrons of the defendant renting telephone instruments in the city of Fairfield pay the defendant the sum of \$1.50 per month for telephone instruments installed in offices and business houses, and the sum of \$1.00 per month for telephone instruments installed in dwelling houses; that patrons renting such telephones are required to pay toll charges to all near-by towns and villages in the county; that persons in the said near-by towns and villages are required to pay toll charges for telephone communication with patrons of the defendant in the city of Fairfield; that patrons of the defendant in the city of Fairfield have communication with very few rural telephones in the immediate vicinity of Fairfield; that the charges demanded by the defendant to points and places outside of the city of Fairfield, are, in many instances, made in excess of the toll charges from such outside points and places to Fairfield; that the defendant is, and has been for some years past, charging the complainants and other patrons of the service unjust and unreasonable rates for the use of its instruments in offices, business houses and residences, etc.; that the said charges are unwarranted, considering the unsatisfactory and generally inefficient service received by said patrons.

The petition further sets forth that prior to the defendant's assuming control and management of the telephone system in the city of Fairfield, the complainants and other patrons of the service were provided communication with some three or four hundred rural telephones in the immediate vicinity of Fairfield; that under the present management they have communication with only some fifty rural telephones in the vicinity of Fairfield; and that on account of the "inept service and accommodations" on the part of

the defendant, the said rural patrons have disconnected their telephones from defendant's system.

The petition further sets forth that the complainant the Wayne County Mutual Telephone Company should be granted a certificate of convenience and necessity to install and operate, within the city of Fairfield, a proper and efficient telephone service; that by the installation of another telephone system the complainants and other patrons of the defendant can be provided with proper and satisfactory service and connection with said rural telephones in the vicinity of Fairfield; that convenient, necessary and satisfactory telephone service can be had with numerous rural exchanges, affording the citizens and business men of the city of Fairfield connection with several hundred rural telephones in the country and with numerous towns and villages in the county and surrounding counties, without the payment of toll charges; that by the construction of another telephone system in the city of Fairfield, the complainants and the public will be afforded much better and more extensive accommodations and at much less charge and expense than is now possible.

The defendant, Commercial Telephone and Telegraph Company, hereinafter referred to as the Commercial company, did not file an answer to the complaint, but filed a motion to dismiss, alleging (1) that the complaint does not show that the Wayne County Mutual Telephone Company and the Business Men's Commercial Club are corporations duly organized and authorized to do business under the laws of the State of Illinois, and by reason thereof there are no proper parties as petitioners or complainants in said cause and no natural or artificial persons as such complainants against whom, or in favor of whom, a lawful order could be entered by the Commission; (2) that said complaint does not show that any person or corporation who is a patron of the defendant has made any complaint as to the character or kind of services rendered by the defendant; (3) that said complaint does not show that the defendant cannot render reasonably good telephone service to its

patrons and the citizens of Fairfield; (4) that said complaint requests a certificate of convenience and necessity for the establishment of a telephone exchange in the city of Fairfield, but no natural person or duly authorized corporation is requesting such certificate, or is named as the person to whom such certificate should be issued.

Subsequently a motion of A. J. Poorman, *et al.*, to be made parties complainant to the petition in this cause was filed. After hearing arguments on both of the above motions, the Commission reserved its ruling thereon until final consideration of the case.

Hearing was held at Springfield, Illinois, May 18, 1915. *Virgil W. Mills*, of *Mills and Forth*, and *John L. Cooper*, attorneys, appeared for the complainants. *John Lynch*, attorney, appeared for the defendant.

From the testimony presented in this case, it appears that the Commercial Telephone and Telegraph Company, which operates an extensive telephone system in southeastern Illinois, with its principal place of business at Olney, operates a telephone exchange in the city of Fairfield, the county seat of Wayne County, serving about 250 subscribers, and has toll lines extending from Fairfield to a number of points in Wayne County, to Albios in Edwards County, and to Flora in Clay County, at which point connection is made with the toll line systems of the Commercial company and the Central Union (Bell) Telephone Company.

It further appears from the testimony that by reason of inadequate and unsatisfactory service furnished by the defendant, certain rural subscribers served on a switching service basis found it necessary to discontinue their connections with the defendant and install a switchboard near the corporate limits of the city of Fairfield, and extend two lines into the city, one of which terminates in a livery stable and the other in a doctor's office; that such rural subscribers are a part of a so-called mutual co-operative organization known as the Wayne County Mutual Telephone Company; that this latter company, hereinafter referred to as the Mutual company, through the co-operation of the Busi-

ness Men's Commercial Club, of Fairfield, and many responsible citizens, proposes to install and operate a telephone exchange in the city of Fairfield, such exchange to be operated on a so-called mutual or co-operative plan; and that said Mutual company proposes to extend the service to many points in Wayne County and to adjoining counties through certain reciprocal arrangements with other so-called mutual telephone companies.

The proposed construction of a competing telephone exchange in the city of Fairfield appears from the evidence to be the result of a state of great dissatisfaction with the service of the defendant company. The statements of various subscribers and former subscribers of the defendant, describing the reasons for this dissatisfaction, cover many pages of testimony.

It was clearly shown by the testimony that the local exchange plant of the defendant is in very poor condition and that many interruptions to the service occur because of the badly deteriorated condition of the outside distribution system and the obsolete substation equipment that is in use. It appeared that the switchboard and other central office equipment is in good condition, but that the operating is not maintained at a high standard of efficiency. Poor operating, coupled with the physical trouble that occurs by reason of the badly deteriorated condition of the plant, has resulted in very unsatisfactory service.

The defendant company introduced some evidence tending to show that "trouble" is cleared promptly and that the dissatisfaction with the service had not resulted in any decrease in traffic. On the contrary, it appeared that the number of calls per subscriber in the city of Fairfield is considerably in excess of the average number of calls per subscriber for exchanges of similar size and character. It was admitted, however, by witnesses for the defendant, that the outside exchange plant is in poor condition. Said witnesses further testified that agitation in the city of Fairfield for the installation of a second telephone system and the action taken by the Mutual company had tended to

discourage any further investment by the defendant in Fairfield.

The inadequacy of the service, it appears, is due largely to the inability of the subscribers of the defendant to communicate with the rural subscribers, that is, the subscribers of the Mutual company, and the inability of the rural subscribers to communicate with the subscribers of the defendant. This condition, of course, is the result of the rural subscribers discontinuing connection with the exchange of the defendant and no doubt has resulted in great inconvenience to all users of telephone service in the city of Fairfield and the rural territory contiguous thereto.

As stated above, the complaint alleges excessive rates charged by the defendant company. With the exception of a statement by a witness for defendant, that the gross receipts for the year 1914 did not meet the expenses, and that with a proper allowance for depreciation a deficit of about \$2900 occurred, no evidence was produced at the hearing regarding the rates.

From a careful consideration of the record in this case, we are of the opinion that the facts developed by the testimony presented at the hearing do not justify the establishment of another telephone system in the city of Fairfield. The State Public Utilities Commission Law provides an adequate way of obtaining good service, just as it provides a remedy for excessive rates. The defendant, since acquiring the telephone exchange in the city of Fairfield, has had ample time to make such improvements in the plant as may be necessary for the furnishing of an adequate and efficient service. Promises made by its management to the public and the press have not been fulfilled, and the condition of the physical plant and the failure of the defendant to make the necessary improvements warrant the Commission in ordering immediate action in this respect.

However, it is the opinion of the Commission that in a case of this kind, where inadequate service is shown to exist, but no steps have been taken to invoke the power of the Commission for the correction of such inadequacy, the

proper remedy is not the granting of permission to a new company to enter the territory. The application of such a remedy would result in the duplication of the plant and equipment of the existing company, and would also result in divided service and its attending evils.

In view of the facts and circumstances in this case, the Commission will not, at this time, order the Mutual company to cease operating its switchboard in the city of Fairfield. The Commission is of the opinion, however, that the rural subscribers connected with this switchboard would be better served by reconnecting their lines and telephones with the exchange of the defendant. The Commission has no power to require individual subscribers to make such reconnection, and since it is recognized that intercommunication between the subscribers of the defendant and the subscribers of the Mutual company is essential to users of telephone service in the city of Fairfield and the rural territory contiguous thereto, it appears that the establishment of a physical connection between the two switchboards is justified.

The final decision of the Commission on the question of issuing a certificate of convenience and necessity to the Mutual company will, for the present, be reserved, and such decision will depend, in a large measure, on the action of the defendant company in taking the steps necessary to improve its service. The establishment of a physical connection between the two switchboards is provided at this time as a temporary arrangement to relieve a condition that is working an inconvenience and hardship on the users of telephone service in the city of Fairfield and vicinity.

The motion above referred to, made by the defendant, to dismiss the petition, and the motion made by A. J. Poorman, *et al.*, to be made parties complainant in this case, are now denied.

It is, therefore, ordered, That the Commercial Telephone and Telegraph Company make such changes and

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improvements in its physical property in the city of Fairfield as may be necessary to furnish adequate and efficient service to its subscribers and the general public. Four months is considered a reasonable period of time within which to make such improvements.

It is further ordered, That the Commercial Telephone and Telegraph Company and the Wayne County Mutual Telephone Company make such physical connection between the exchange of the former and the switchboard operated by the latter in the city of Fairfield as is required for the furnishing of toll service and local service, including rural service, to the subscribers of each company. The manner and division of the cost of making such connection, the terms under which intercompany calls will be handled, and the schedule of rates or charges that should be established will be left to the companies in the first instance, and if no agreement can be reached, a further hearing will be granted to the parties by the Commission and a supplemental order issued determining these matters.

The Commission reserves jurisdiction of the subject matter and the parties for the purpose of making such further order herein as future developments may warrant.

Twenty days will be deemed a reasonable time within which the parties shall comply with this order.

By order of the Commission, this twenty-fifth day of August, 1915, dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF THE MOWEAQUA
TELEPHONE COMPANY FOR AUTHORITY TO CHANGE RATES.

Case No. 3357.

Decided August 26, 1915.

**Increase in Rates Not Granted — Proposed Additions and Betterments
Not to be Considered in Valuing Property for Rate-Making Purposes.**

Applicant sought authority to increase its rates for grounded service as the present rates were inadequate, and also sought approval of a

schedule of rates to become effective upon the replacement of the present grounded system by a metallic system.

Two reports were prepared covering the inventory and appraisal of the property. The first report covered the cost of reproduction new, present value, amount of depreciation and going value; the second set up the estimated value of the exchange plant, with a new distribution system, the amount of depreciation, going value and an analysis of revenues and expenses under the proposed rates.

Held: That in fixing the value of the property of a public utility for rate-making purposes, a regulatory body is justified in including in its valuation only such property as exists at the time the investigation is made and as is used and useful in serving the public, and should not consider proposed additions and betterments;

That the proposed immediate increase in rates for grounded line telephone service is not warranted and the application for authority to put in effect such increased rates should be denied;

That the rates which the petitioner may charge for metallic service cannot be determined until such time as the petitioner's telephone system has been made metallic and a showing of the value of such reconstructed plant has been made;

That the betterments and additions that the petitioner proposes to make are reasonable and necessary in order to furnish adequate and efficient service;

That if said improvements are made in a manner, to the extent and by the expenditures of the amounts proposed by the petitioner the rates which the petitioner is seeking authority to establish, except the rate for switching rural service stations, will then be reasonable and just.

Rates for Switching Rural Service Stations Discussed — Traffic Study Made.

Applicant proposed to charge a switching rate of \$9.00 per year with a discount of \$3.00 per year for payment six months in advance.

The cost of service on a per station basis was \$5.84 per station. However, as the division of expenses on a per station basis is unreliable since the expenses are in a large measure dependent upon the work involved in handling calls rather than upon the number of subscribers served, a five-day traffic study was made of all traffic handled through the Moweaqua exchange. An analysis of this study indicated that a net rate of \$7.00 for switching rural service subscribers was justified, but that if a discount of \$3.00 per year for payment six months in advance was to be applied, the average switching rate would be less than the average expense per station for switching these subscribers. In view of the conclusions arrived at, the Commission did not find it necessary to de-

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termine the amount of discount that might properly be allowed in connection with the rates for the several classes of service proposed by the petitioner.

OPINION AND ORDER.

Application in the above entitled matter sets forth that the petitioner is a public utility engaged in the management and operation of a telephone system in and around the village of Moweaqua, Shelby County, Illinois; that the rates it now has in force and effect do not produce sufficient revenue to enable the utility to pay all operating expenses, including depreciation and a reasonable return on the capital invested; that the petitioner proposes to rebuild the exchange plant in the village of Moweaqua, replacing the present system with a metallic system; that the proposed increases in rates for grounded line service should become effective at once, and the proposed rates for metallic line service should become effective immediately after the completion of the rebuilding of the exchange plant.

The rates of the petitioner now in force and effect as set forth in the application, are as follows:

Individual line business telephones in the village.....	\$15 00 per year
Individual line business telephones in the country....	24 00 per year
Party line business telephones in the country.....	15 00 per year
Individual line residence telephones in the village.....	12 00 per year
Rural party line telephones.....	12 00 per year
Business extension telephones.....	6 00 per year
Residence extension telephones.....	6 00 per year
Extension bells	3 00 per year
Switching charge for rural service subscribers.....	5 00 per year

Application is made for authority to discontinue the rates now in force and effect and substitute in lieu thereof the following schedule:

Individual line business telephones, in the village— metallic circuit	\$27 00 per year
Two-party line business telephones in the village— metallic circuit	21 00 per year
Party line business telephones in the country— grounded circuit	24 00 per year
Individual line residence telephones in the village— metallic circuit	21 00 per year
Two-party line residence telephones in the village— metallic circuit	18 00 per year
Individual line residence telephones in the village— grounded circuit	18 00 per year
Rural party line telephones—grounded circuit.....	18 00 per year
Business extension telephones	12 00 per year
Residence extension telephones	9 00 per year
Extension bells	6 00 per year
Switching charge for rural service subscribers.....	9 00 per year

All of the above rates, with the exception of the rate for switching rural service subscribers, are subject to a discount of 25 cents per month if paid at the company's office on or before the fifteenth day of the current month. The rate for switching rural service subscribers is subject to a discount of 25 cents per month if paid six months in advance, at the company's office, on or before January 15 and July 15 of each year.

An extra mileage charge of \$6.00 per mile per year, minimum charge \$5.00, applies to individual line telephones beyond the village limits or Moweaqua exchange radius.

Hearings in this case were held at Springfield, Illinois, April 7, and May 4, 1915. *O. F. Berry* and *B. B. Boynton*, attorneys, appeared for the petitioner. *Logan Hay*, attorney, on behalf of the Chamber of Commerce of Moweaqua, appeared objecting.

The petitioner submitted at the hearing on April 7 statements of assets and liabilities, earnings and expenses, station development, etc., and an inventory and appraisal of the property of the Moweaqua Telephone Company.

Two reports were prepared covering the inventory and appraisal of the property. The first report hereinafter referred to as Plan I, covers the cost of reproduction new, the present value of the plant, the amount of depreciation, and the going value. The second report hereinafter referred to as Plan II, sets up the estimated value of

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the exchange plant with a new distribution system in the village, depreciation, going value, and an analysis of revenue and expenses under the proposed rates.

PLAN I.

RECAPITULATION.

	<i>Cost to Reproduce.</i>	<i>Salvage.</i>	<i>Present Value.</i>
Real estate	None		None
Central office equipment....	\$1,037 75	\$83 50	\$874 57
Distributing system	3,222 94	110 33	2,257 26
Subscribers' stations equip- ment	2,714 25	226 60	2,114 42
Furniture and fixtures.....	644 50		503 95
Tools	105 70		
Stable and garage equip- ment	849 00		769 71
TOTAL	\$8,574 14	\$420 43	\$6,519 91
Stock material	99 08		99 08
Plans and engineering.....	1,286 12		977 45
Rural plant	15,643 45	244 00	12,498 84
	\$25,602 79	\$664 43	\$20,095 28

PLAN II.

RECAPITULATION.

	<i>Cost to Reproduce.</i>	<i>Salvage.</i>	<i>Present. Value.</i>
Real estate	None		None
Central office equipment....	\$1,273 00	\$83 50	\$1,147 75
Distributing system	8,710 63	881 29	8,710 63
Subscribers' stations equip- ment	2,714 25	226 60	2,114 42
Furniture and fixtures.....	644 50		503 95
Tools	105 70		86 96
Stable and garage equipment	849 00		682 75
TOTAL	\$14,297 08	\$1,191 39	\$13,246 46
Stock material	99 08		99 08
Plans and engineering	1,986 96		1,986 96
Rural plant	15,643 43	244 00	12,498 84
	\$32,026 55	\$1,435 39	\$27,831 34

In fixing the maximum rates for telephone service that petitioner may charge at Moweaqua, Illinois, the Commission is asked to consider not only the value of the present telephone plant at that point, but also to take into consideration the proposed additions and betterments that petitioner contemplates making to said plant in the immediate future. In other words, we are asked to consider petitioner's telephone plant as if it already included the new construction and improvements that are about to be made.

It is a fundamental principle that a regulatory body, in fixing the value of the property of a public utility for rate making purposes, is justified in including in its valuation only such property as exists at the time the investigation is made, and as is used and useful in serving the public.

The Commission feels that it would not be justified in this case in departing from the principle above stated, and that until said proposed additions and betterments have actually been made, it should only consider and include in its valuation the existing telephone plant of the petitioner. Of course, when the proposed improvements have been completed, a showing of that fact and the value of such improvements can then be made to the Commission, and the maximum rates that petitioner may charge for telephone service rendered the public through the reconstructed plant can then be determined.

In substantiation of the proposed rural switching rate of \$9.00 per year, with a discount of \$3.00 per year if paid six months in advance on or before January 15 and July 16 of each year, the petitioner submitted a statement of central office expenses apportioned as follows:

EXPENSES OF WHICH SERVICE STATIONS SHOULD BEAR THEIR PRO RATE
SHARE.

	<i>Annually.</i>
Manager	\$1,200 00
Bookkeeper	300 00
Operators	1,200 00
Office rent	180 00
Heat, light and power.....	108 00
Central station equipment expense.....	96 00
Cable expense	60 00
Bad accounts	83 94
	<hr/>
	\$3,227 94
Number of stations.....	553
Per station cost.....	\$5 84

The division of central office expenses, however, on a per station basis is an unreliable method of computing rates, as such expenses are, in a large measure, dependent upon the amount of work involved in handling calls rather than upon the number of subscribers served.

Accordingly, a "peg count" or traffic study of all traffic handled through the Moweaqua exchange was made for a five-day period under the supervision of the Commission's experts, and a report thereof made a part of the record. An analysis of this traffic study indicates that a net rate of \$7.00 per year for switching rural service subscribers is justified, but that if a discount of \$3.00 per year for payment six months in advance is applied, the average switching rate will be less than the average expense per station of switching these subscribers. However, in view of the conclusion we have arrived at in this case, it will not be necessary, at this time, to determine the amount of discount that may properly be allowed in connection with the rates for the several classes of service proposed by petitioner.

From a careful consideration of the testimony and exhibits introduced in this case, the Commission finds as follows:

(1) That the proposed immediate increase in the rates for grounded line telephone service is not warranted, and

the application of the petitioner for authority to put into effect such increased rates should be denied.

(2) That the rates petitioner may charge for metallic service cannot be determined by the Commission until such time as petitioner's telephone system has been made metallic and a showing of the value of such reconstruction plant has been made before the Commission.

(3) That the betterments and additions that petitioner proposes to make to its said telephone plant at Moweaqua are reasonable and necessary in order that the petitioner may be able to furnish adequate and efficient service to the public.

(4) That if said improvements are made in a manner, to the extent and by the expenditures of the amounts proposed by the petitioner, as set forth in Plan II, above mentioned, the rates petitioner is seeking authority to establish, except the rate for switching rural service stations, will then be reasonable and just.

It is, therefore, ordered, That for the present the prayer of the petition will not be granted.

The Commission, however, reserves jurisdiction of the subject matter and of the parties, so that after the improvements above referred to have been made, petitioner may report that fact to the Commission; the case may then be reopened for further hearing as to the value of such improvements and of the reconstructed plant. The proposed increase in rates may then be finally considered.

By order of the Commission, this twenty-sixth day of August, 1915, dated at Springfield, Illinois.

INDIANA.

Public Service Commission.

IN THE MATTER OF THE APPLICATION OF THE CARLISLE CO-
OPERATIVE TELEPHONE COMPANY OF CARLISLE, INDIANA,
FOR AUTHORITY TO INCREASE RATES.

No. 1258.

Decided June 4, 1915.

**Discrimination in Favor of Stockholders and Subscribers Owning
Telephones Eliminated.**

OPINION AND ORDER.

On the fifteenth day of January, 1915, the Carlisle Co-operative Telephone Company, a corporation organized and doing business under the laws of the State of Indiana, filed an application with this Commission asking for authority to increase the schedule of rates, tolls and charges demanded, collected and received by it on the first day of January, 1913, which schedule is now on file with this Commission. The petition set out that the schedule of rates, tolls and charges in effect at the present time were in words and figures as follows:

TELEPHONE RENTAL.

To all stockholders of the company the following charges are made:

Residence 'phone where party owns own telephone transmitter and receiver	\$5 00 per month
Residence 'phone of stockholders when they do not own telephone transmitter and receiver.....	60 per month

To all subscribers not stockholders:

Residence 'phone	\$1 00 per month
Business 'phone	2 00 per month

It is further alleged that the above schedule of rates is discriminatory in that it fixes a less charge, rate or toll for telephone service to stockholders than to non-stockholders.

The petition asks that the following schedule of rates be approved by the Public Service Commission:

Residence telephone	\$1 00 per month
Business telephone	2 00 per month
Lodge Hall telephone	1 00 per month
Business telephone in residence.....	2 00 per month

A hearing was held in this cause June 2, 1915, at the office of the Commission at Indianapolis, Indiana, and the telephone company and the stockholders and directors were represented.

The Utility Commission Act, Section 112, provides as follows:

"If any public utility or any agent or officer thereof, or any officer of any municipality constituting a public utility as defined in the act shall, directly or indirectly by any device whatsoever, charge, demand, collect or receive from any firm, person or corporation, a greater or less compensation for any service rendered or to be rendered, or for any service in connection therewith, than that prescribed in the published schedules or tariffs then in force or established as provided herein, or than it charges, demands, collects or receives from any other person, firm or corporation for a like or contemporaneous service, such public utility shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful," etc.

Section 113 of the Utility Commission Act provides:

"It shall be unlawful for any public utility to demand, charge, collect or receive from any person, firm or corporation less compensation for any service rendered or to be rendered by said public utility in consideration of the furnishing by said person, firm or corporation of any part of the facilities incident thereto: *Provided*, nothing herein shall be construed as prohibiting any public utility from renting any facilities incident to its business."

This Commission finds that the rates now demanded, collected and received by the Carlisle Co-operative Telephone Company are unjustly discriminatory under Section 112 of the Utility Commission Act, in that said schedule provides for a less rate to stockholders than is charged to other users for a like and contemporaneous service.

This Commission further finds that the practice of charging certain stockholders a less rate because they own the telephone transmitter and receiver, and other stockholders

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a greater rate because they do not own these facilities, is unlawful under Section 113 of the Utility Commission Act.

It is, therefore, ordered, That the following schedule of rates for all users of the Carlisle Co-operative Telephone Company be and is here now approved:

Residence telephones	\$1 00 per month
Business telephones	2 00 per month
Lodge Hall telephones	1 00 per month
Business telephones in residences.....	2 00 per month

June 4, 1915.

IN THE MATTER OF THE APPLICATION OF THE LOGANSPORT
HOME TELEPHONE COMPANY, OF LOGANSPORT, INDIANA,
FOR AUTHORITY TO INCREASE RATES.

No. 327.

*Decided July 30, 1915.**

Increase in Rates Authorized.

Applicant sought authority to increase its rates for service within the city of Logansport. The city of Logansport objected to the increase claiming that the rates to be charged subscribers for service within the city were fixed by an ordinance granted to the predecessors of the applicant to occupy the streets and highways of Logansport, under which ordinance the applicant was at present operating.

An appraisal of the Logansport company was made by the engineering staff of the Commission and the cost of the reproduction was found to be \$273,567 and the present value \$219,732. To this appraisal the applicant objected, claiming that the Commission's engineers had omitted certain items of value and had underestimated others.

Value of Property Determined.

Held: That it would cost approximately \$95.00 per station to replace the applicant's system and bring it to its present state of efficiency, that the plant at present was in approximately 80 per cent. condition, that the applicant should be allowed to earn a return on a valuation of \$75.00 per station, that as the company has 3,485 stations the present value of the plant, including going value, was \$261,375.

*A complaint has been filed with the Cass County Circuit Court of Indiana, seeking to enjoin the Public Service Commission from granting any rate higher than the maximum fixed in the franchise granted the Logansport Home Telephone Company.

Operating Cost per Station Considered.

Held: That the operating expenses for an exchange of the size and construction of the Logansport exchange should be \$14.00 per station per year.

8 Per Cent. Held Reasonable Rate of Return.

Held: That a return of 8 per cent. on the value of the property should be allowed.

4 Per Cent. Held Reasonable Reserve for Depreciation.

Held: That 4 per cent. is a reasonable reserve for depreciation for a telephone plant of the size of the Logansport company and operated under the conditions under which said company is operating, and that the Logansport company should keep a depreciation fund of 4 per cent. of \$75.00 for each and every station.

New Schedule of Rates Approved.

Held: That a schedule of rates which would yield an average rental of \$23.00 per station per year should be authorized;

That the rates in force at the time of the petition were unreasonable, discriminatory and preferential, and otherwise in violation of law.

FINDINGS AND ORDER.*

A hearing was held in the above entitled cause at Logansport, Indiana, on the thirtieth and thirty-first days of March, 1915.

The Public Service Commission being duly advised in the premises finds from the evidence in the case that it would cost approximately \$95.00 per station to build the Logansport Home Telephone Company's system and bring it to its present state of efficiency.

The Public Service Commission further finds from the evidence in the case and from the experts of said Commission that the present telephone system in the city of Logansport is in approximately 80 per cent. condition.

The Public Service Commission further finds that the value of the Logansport Home Telephone Company upon which said company shall be allowed to earn is \$75.00 per station.

*Copy of petition, amended petition, objection of city of Logansport, appraisal of property and company's objection thereto, omitted.

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The Public Service Commission further finds that on April 1, 1915, the Logansport Home Telephone Company had the following number of telephones installed in the city of Logansport, Indiana:

Business two-party	22
Business one-party	551
Business extension (first)	88
Business extension (second)	24
Business extension	2
Business extension	2
Business extension	2
P. B. X.	25
City Schools	9
Clubs	1
Clubs	12
Residence two-party	1706
Residence one-party	925
Residence extension	85

Concessions:

Business (telephone company)	5
Business extension (telephone company)	6
Residence (telephone company)	2
Business municipal	13
Residence municipal	1
Business charity	3
Business charity, extension	1

TOTAL STATIONS 3485

The Public Service Commission further finds the value of the Logansport Home Telephone Company's property is \$261,375. The going value of the Logansport Home Telephone Company's plant is included in the above amount, and was determined upon the evidence in the case, based upon the amount of money that it would require to build and install the telephone plant in the city of Logansport, and bring it to its present state of efficiency. The report of the auditors of the Commission shows that the total operating expenses of the Logansport telephone exchange is \$12.00 per station per year. It developed during the hearing of the trial that the girls operating at the

switchboard and certain other help working for this telephone company were not paid a sufficient amount of money, and that the earnings of the telephone company did not justify any larger operating expense than \$12.00 per station per year.

The Public Service Commission further finds, from the evidence introduced in the case by numerous telephone operators and a comparison of the figures given by the superintendents of numerous exchanges, that the operating expense for a telephone company the size of the Logansport Home Telephone Company, situated in a city the size of Logansport, should be \$14.00 per station per year.

The Public Service Commission further finds that 8 per cent. interest should be allowed on the actual value of the plant.

The Public Service Commission further finds that the proper depreciation for a telephone plant of this size operated under the conditions under which this plant is operated should be 4 per cent.

The Public Service Commission further finds that the total amount of revenue necessary for the Logansport Home Telephone Company to earn is \$23.00 per station per year.

The Public Service Commission further finds that the following rates, tolls and charges will yield the Logansport Home Telephone Company an average rental of \$23.00 per station per year, after the company has had sufficient time to give the people of Logansport good and efficient service, and to furnish the kind of service desired by its telephone users:

Business, one-party line.....	\$36 00 per year
Business, two-party line.....	30 00 per year
Business, extension (first).....	9 00 per year
Business, extension (second).....	6 00 per year
P. B. X.....	10 00 per year
Residence, one-party line.....	24 00 per year
Residence, two-party line.....	21 00 per year
Residence, four-party line.....	15 00 per year
Residence, extension	6 00 per year

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The Public Service Commission further finds that the rates, tolls and charges in force and effect at the time the petition herein was filed, and at the time of the hearing in said proceeding, were, and still are, unreasonable, discriminatory and preferential, and otherwise in violation of the law.

And the Commission ascertains and declares the following expenses were incurred upon the investigation of the matters set forth in said petition, to-wit:

Engineers' expense	\$893 24
Auditors' expense	262 45
TOTAL	\$1,155 69

The Public Service Commission further finds that the expenses as herein set out were of the value set forth and are reasonably necessary in the investigation of the matters set forth in said petition.

It is, therefore, ordered by the Public Service Commission of Indiana, That the Logansport Home Telephone Company shall file with the Public Service Commission of Indiana the following rates, tolls and charges, which said rates, tolls and charges shall be in force and effect on and after October 1, 1915:

Business, one-party line.....	\$36 00 per year
Business, two-party line.....	30 00 per year
Business, extension (first).....	9 00 per year
Business, extension (second).....	6 00 per year
P. B. X.....	10 00 per year
Residence, one-party line.....	24 00 per year
Residence, two-party line.....	21 00 per year
Residence, four-party line.....	15 00 per year
Residence, extension	6 00 per year

It is further ordered by the Public Service Commission, That the Logansport Home Telephone Company shall set aside and keep as a depreciation fund 4 per cent. on \$75.00 for each and every station now in use and for any others that may be hereafter installed.

It is further ordered by the Public Service Commission, That within twenty days from the receipt of this order the Logansport Home Telephone Company shall pay to the State Treasurer the sum of \$1155.69.

Indianapolis, Indiana, July 30, 1915.

WHITLEY COUNTY TELEPHONE COMPANY *v.* FARMERS MUTUAL
TELEPHONE COMPANY.

No. 1217.

*Decided August 5, 1915.**

Establishment of Physical Connection Ordered.

Petitioner sought the establishment of physical connection between the lines of the Whitley County Telephone Company and the Farmers Mutual Telephone Company.

The petitioner and defendant were operating competing telephone systems in Whitley County, each company having its principal office in Columbia City. The petitioner had sought in vain to bring about a consolidation of the two companies.

The petitioner was willing to furnish service over its lines to the patrons of the defendant after a connection was made, this service to be without payment of toll on messages to or from points where the lines of the petitioner and defendant were competing, but a toll to be collected on messages to or from points on the petitioner's line where competition did not exist. The petitioner was also willing to give the defendant direct physical connection with all toll lines which connected with the petitioner's exchanges, the subscribers of the defendant to pay the same toll as did the subscribers of the petitioner, and the defendant to have the tolls on all business originating on or going to its lines, on a mileage basis computed between it and the long distance company. The petitioner contended that it should be allowed a switching charge on all toll business coming from the lines of the defendant in order to compensate it for the increased expense made necessary by the handling of said toll business.

Defendant maintained that there was no public demand for a consolidation of the companies or for physical connection, that the connection would be of little use to it, that if the connection was ordered, the

*An appeal has been taken by the defendant to the Circuit Court of Whitley County.

petitioner should pay a fair and reasonable price for the transmission of its messages over the defendant's line and the defendant should not be required to transmit toll messages over the lines of the petitioner.

Defendant alleged that both the petitioner and the defendant maintained exchanges at Etna, and while it was required to pay a toll charge for all messages over the Public Service line, with exchanges at Cromwell and North Webster, and over the Noble County line with an exchange at Kimmel, the petitioner's subscribers received free service to Cromwell, North Webster and Kimmel, that furthermore, the petitioner's subscribers had free service over the lines of the Churubusco Telephone Company in return for free service given the subscribers of the Churubusco company over the lines of the petitioner, whereas the defendant's subscribers were obliged to pay for messages sent over the lines of the Churubusco company. Defendant asked that either both companies should have free service or both should pay the same toll charge for messages over the Churubusco company's line, and that the toll charges over the Public Service and Noble County lines should be fairly adjusted.

The Churubusco Telephone Company agreed that either both companies should have free service over its lines or both should pay toll, and submitted the rate to the Commission to make such adjustment as might be reasonable.

Held: That public convenience and necessity require the said connection;

That it would be beneficial to the subscribers of the two companies if the lines were connected whereby communication could be had between the subscribers of both companies, and that further benefit would occur in this — that in instances where but few persons were on the rural line of one company the subscribers might be transferred to the other having the greater density of business, and the lines thus stripped of telephones might be dismantled and the salvage used at some other point for repair or extension, thus lessening the cost of installation and maintenance;

That in view of the fact that the Whitley County Telephone Company has a larger per cent. of subscribers in towns, while the Farmers Mutual Telephone Company has a larger per cent. of subscribers on its rural lines, physical connection would probably enable the companies to serve the public in the future with less duplication of lines;

That physical connection can be made between the properties of these companies without irreparable injury to the defendant company or to any user of its equipment, nor will it be of any substantial detriment to the service to be rendered by said defendant or any of its users of service, nor will such physical connection be of injury to the petitioner's property;

That physical connection could be made at a small cost and that the additional cost of operation would not be great;

That the companies ought not to be required to interchange service free;

That the companies should observe the accounting plan heretofore ordered by the Commission in order that the Commission might learn the

exact additional expense due to the connection and determine what, if any, switching fee should be paid by the subscribers of either company or in what manner the companies, or either of them, should receive compensation on account of any additional expense by reason of the additional service thus rendered;

That as the company rendering service for the parties hereto out of Etna was not before the Commission, no finding as to that service should be made;

That the subscribers of the Whitley County Telephone Company and the subscribers of the Farmers Mutual Telephone Company should pay the same rate for service over the lines of the Churubusco Telephone Company and that a fee of 5 cents should be paid for this service by the subscribers of both companies.

Ordered, That a physical connection be established between the lines of the Whitley County Telephone Company and the Farmers Mutual Telephone Company at the exchanges of the said companies at Columbia City;

That the expense of making such physical connection be borne equally by said companies;

That said companies shall keep an accurate account of the amount of interchange switching done under this order and submit to the Commission a statement of such exchange switching, thus enabling the Commission to fix the cost and charges for said companies and the subscribers so receiving such switching service;

That the compensation and charges to be fixed on account of interchange service resulting from this physical connection shall relate to and from the first day of September, 1915, the date upon which said physical connection shall become effective.

OPINION AND ORDER.

The petition filed in this case prays an order for the physical connection of the Whitley County Telephone and the Farmers Mutual Telephone companies' lines, prescribing the conditions and compensation for such physical connection, how and within what time the same shall be made, and by whom the expense for making such connection shall be paid.

It is generally alleged in the petition that the Whitley County Telephone Company is a corporation organized under the laws of the State of Indiana for the purpose of building, maintaining and operating for hire telephone lines and telephone exchanges in the counties of Allen and Whit-

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ley in said State, with its principal office at Columbia City; that the Farmers Mutual Telephone Company is organized under the laws of the State of Indiana for the purpose of building, maintaining and operating for hire telephone lines and telephone exchanges in the counties of Whitley, Allen, Noble, Huntington and Kosciusko in said State, and that its principal office is at said Columbia City in said State; that the said Whitley County Telephone Company has in use 1945 'phones and that the said Farmers Mutual Telephone Company has in use about 1775 'phones; that about 300 subscribers have in their place of business and homes the 'phones of each of said companies, and that said companies each maintain telephone exchanges at Columbia City, South Whitley, Larwill, Laud and Etna, all in Whitley County; that in said territory said companies are competitors and their lines in many cases parallel each other and serve the same neighborhood and make a duplicate service thereto, by which the cost thereof is greatly increased to the public; that the petitioner company has direct telephone connection, outside of said Whitley County, with Pierceton, Warsaw, North Manchester, Huntington, Ft. Wayne, Albion and Ligonier, over lines partly maintained and operated by said company, and connection with many other towns and cities in Indiana and other states, through the exchanges of other companies, and that the petitioner company also has direct connection with the Home Telephone Company of Ft. Wayne, Indiana, by which it reaches all of the patrons of said company, and also has the only connection in Whitley County with the Central Union Telephone Company for long distance communication; that for messages transmitted over said connecting lines the petitioner company is compelled to pay toll charges under contracts and agreements with said connecting lines; that said petitioner company also maintains a telephone exchange at Arcola, Allen County, Indiana, which serves about 193 subscribers, that said subscribers do not live in localities where said Farmers Mutual Telephone Company maintains competing telephone lines, and that the

business of said Arcola exchange has been built up solely by the effort and at the expense of the petitioner company; that the operation by the petitioner company and the Farmers Mutual Telephone Company of competing lines in the same territory without any physical connection between the two systems, is not only wasteful and extravagant to said companies by unnecessary duplication of facilities and service, but is also inconvenient, unsatisfactory, annoying and expensive to the patrons of said companies, and that good judgment requires the consolidation of said companies thereby reducing the operating expenses and affording the public greatly increased telephone facilities at less expense, and also giving to the stockholders of each company a fair return upon the value of the property invested; that the defendant Farmers Mutual Telephone Company has refused to join in a petition to the Public Service Commission of Indiana to fairly and justly appraise the property and rights of said companies, and to justly and equitably provide for their consolidation; that the petitioner offers to agree and consent to an order of said Commission for the physical connection of the lines of said companies upon such terms as to the cost of such connection or otherwise as said Commission may prescribe; and that when such connection is made the patrons of said defendant company may have direct connection and service over the petitioner's lines, with all of its subscribers, without the payment of tolls or other charges therefor; that the petitioner will furnish to the defendant company telephone service to all of the subscribers to its Arcola exchange, and from said subscribers to the defendant's lines, but in view of the fact that the lines tributary to said exchange are not in competition with the lines of the defendant company but open up new and important territory to it, the petitioner submits that on messages from defendant's lines to subscribers of said Arcola exchange and from subscribers to persons on defendant's lines the petitioner ought to be allowed a small switching charge to compensate for said increased business; that the petitioner company is willing to give defend-

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nt company direct physical connection with all of the toll
 nes which connect with the petitioner's exchanges, the
 subscribers of the defendant company to pay for said
 service the same toll charges which the petitioner's sub-
 scribers are required to pay, the defendant to have the tolls
 a business originating on, or going to its lines, on a mile-
 ge basis computed between it and the long distance con-
 nections. The petitioner further represents that inasmuch
 as the defendant company does not have access to said
 all lines, it cannot give its subscribers direct connec-
 tion with many important towns and cities, both nearby and
 a long distance, except by long, unsatisfactory and
 pensive detours which materially lessen the value of the
 rvices of the defendant company in such cases; that the
 ommission of right ought to allow the petitioner to make
 switching charge on all toll business coming from the
 es of the defendant company, to partially compensate it
 r the increased office and other expenses made necessary
 the handling of said toll business; and the petitioner
 rther represents that the physical connection prayed for
 n be accomplished without irreparable damage or injury
 the defendant company, or to its patrons and subscrib-
 s, and that such physical connection would not be a detri-
 nt to the service to be rendered by the defendant or to
 e users of the service furnished by the defendant; but on
 e contrary that such connection would greatly benefit the
 endant company, would enhance the value of its cor-
 ate property and make the telephone service furnished
 it more valuable, convenient and satisfactory.

The defendant Farmers Mutual Telephone Company
 d its answer and cross complaint, alleging in substance:
 That it maintains telephones and exchanges in Whitley,
 en, Noble, Huntington and Kosciusko counties in said
 te, with its principal office at Columbia City; that both
 said companies are public utilities; that the plaintiff
 upany was organized and in operation in Whitley
 inty many years prior to the organization of the de-
 dant company, but that the organization of said de-

defendant company grew out of public necessity and need and that the public in general as well as the subscribers of the defendant company have been greatly benefited by the organization and operation of said defendant company; that prior to the organization of said defendant company, toll was charged by said plaintiff company for telephone messages to Raber, Peabody, Laud, Etna, Larwill, South Whitley, Collins, Coesse and Churubusco, all towns within Whitley County; that prior to the organization of defendant company plaintiff company was charging rural and city subscribers \$1.50 per month; that it was almost impossible for farmers to get lines constructed and have telephone service; that said rates, charges for toll and conditions referred to, existed until the defendant company commenced operation; that when said defendant company began business very few farmers in Whitley County had telephone service and that the plaintiff company at that time had very few farm lines or rural subscribers; that as a result of the organization and operation of said defendant company, no toll rates are charged by either company for messages to any of the towns or villages in Whitley County, and that the rates for rural and city telephones have been reduced from \$1.50 to \$1.00 per month; that the defendant company has lines constructed on almost every highway in said county and comparatively few farmers are without telephones; and said company denies that there is any public demand for a consolidation of the companies or for physical connection; that said defendant company has 1400 miles of telephone lines, 5 exchange stations, and there is now in use in Whitley County 270 miles of poles and 5925 feet of underground cable and 7500 feet of aerial cable in said county, and that said company has connection with the towns of Churubusco, South Whitley, Peabody, Larwill, Raber, Laud, Etna and Collins in said county, and that said company has direct connections outside of said county with Albion, Cromwell, North Webster, Leesburg, North Manchester, Roanoke, Silver Lake, Bippus and Warsaw through North Webster, and with Ft. Wayne through

Churubusco over lines partly maintained and operated by said defendant company; that said defendant company has connection with many other towns and cities in Indiana and other states through the exchanges of other companies; that exchanges are maintained at Columbia City, South Whitley, Larwill, Etna and Laud in said county; that the defendant company alleges that its subscribers are perfectly satisfied with the plant operated by said company, that it meets the needs and demands of the times, and that the lines and plant are in the best of condition; that it is opposed to a consolidation and is not asking for physical connection of lines; that it is opposed to switching or connection charges to be made against subscribers of the defendant; that the defendant does not need the use of the plaintiff's lines and that the same would be of very little benefit to defendant company or its subscribers; that if the lines of the defendant are to be used by the plaintiff company for their benefit, then defendant demands that plaintiff company pay to the defendant company a fair and reasonable price for the transmission of messages over the defendant company's lines; that it now has in service in said county 266 telephones at the Larwill exchange, 95 at Etna exchange, 340 at South Whitley exchange, 287 at Laud exchange, 569 farm telephones at Columbia City, also 235 city telephones at Columbia City exchange. And it is further averred that the plant of the plaintiff has not been kept in repair, that their rural lines in said county are in such condition that it will be necessary to rebuild many of them; that said plaintiff company has a comparatively few rural subscribers as follows: Larwill 15, Etna 130, Laud 13, South Whitley, city and rural, 350. And it is further averred that the defendant company has no competing line in the Arcola territory of the petitioner company, but that the defendant company is not wanting or demanding service with said Arcola exchange and such service will be of little, if any, value to the defendant company. It is further averred that the defendant company objects to the payment of switching fees of any kind to the petitioner company for

any service proposed to be rendered. It is further averred that the petitioner and defendant companies maintain exchanges at Etna, Whitley County, and both have subscribers in the vicinity of said exchanges; that defendant company is required to make a toll charge for all messages over the Public Service line with exchanges at Cromwell and North Webster and over the Noble County line with an exchange at Kimmel; that plaintiff company has manipulated in such a manner as to give to their subscribers free service to Cromwell, North Webster and Kimmel and has been soliciting the subscribers of the defendant company to become their subscribers, alleging that such practices are unfair and a discrimination against the defendant company and should be adjusted by said Commission; and the defendant company further avers that the petitioner company and the Churubusco Telephone Company a number of years ago entered into an agreement or understanding, the nature of which is unknown to the defendant company, by which free service was given by the Churubusco company to all subscribers of the plaintiff company over their lines, and in turn free service was given subscribers of the Churubusco company over lines of the plaintiff; that about a year ago connection was made by defendant company with said Churubusco company and a toll charge of 10 cents has been charged against subscribers of said defendant company, and that it is not just that the subscribers of one company should pay and the subscribers of the other company have free service, and the defendant company prays the Commission that this may be adjusted — either that both have free service or that each pay the same charge and be placed upon an equal basis, and asking that the Churubusco Telephone Company be made a party to this proceeding, in order that a full adjustment may be made of said matter; that it is further averred that the public is not demanding physical connection of the lines of said companies; that the same is a scheme of the petitioner company to have the Commission make some order or decree which will enure to the benefit of the petitioner company; that the defendant company is satisfied with the

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rentals now charged and is opposed to the raising of rates or toll charges and is not asking that the property of the defendant company be appraised by any person or Commission, and objects to any method by which the business of said defendant company will be damaged and the value of the plant destroyed for the benefit of its competitors, and asking that if the Public Service Commission deem it to the public interest that there be physical connection of said companies that the plaintiff company be required to pay for the use of the lines of the defendant company, and that the defendant be not required to transmit toll messages over the lines of plaintiff company, and that the toll charges at the Etna exchange be properly and fairly adjusted, and that the discrimination of toll charges with the Churubusco company be adjusted so that both companies be placed on an equal basis.

The Churubusco Telephone Company appeared, waived the issuance of notice and service, and have answered to the cross complaint of the defendant Farmers Mutual Telephone Company, alleging that prior to the eleventh day of April, said Churubusco telephone plant was owned and operated by William Geiger and Virgil Geiger; that on said date said Geigers sold said plant and since then the property has been operated by the Churubusco Telephone Company; that during the time when the plant was being operated by the Geigers, an agreement was entered into whereby the Whitley County Telephone Company and said Churubusco company exchanged messages so that the subscribers of the Churubusco telephone plant had access to the lines of the petitioner company, and the petitioner company's subscribers had access to the lines of the other company, and no toll was charged by either of said companies; that the Churubusco company so organized did not enter into any contract with said Whitley County Telephone Company, nor did its predecessor, Mr. Henry W. Soest, make any contract with said Whitley County Telephone Company, but by reason of the previous arrangement messages were received and transmitted by mutual consent of said parties free of charge; that about a year

prior to the filing of said answer, the Farmers Mutual Telephone Company connected their lines with the lines of the Churubusco company and it was agreed that a toll charge of 10 cents should be made against the subscribers of one company when talking to the subscribers of the other; that said Churubusco company believed that in right and justice a charge should be made against the Whitley County Telephone Company of 10 cents for all messages over the lines of the Churubusco company, and that the Churubusco company likewise should pay a charge of 10 cents for all messages over the lines of the Whitley County Telephone Company, or if the Whitley County Telephone Company should have free switching service to the Churubusco lines, the Farmers Mutual Telephone Company should likewise have such free service, and submits the rate to the Public Service Commission to make such adjustment and order as it may deem just and reasonable between the parties to the proceedings.

The evidence taken at the hearing in this case, which was held at Columbia City, March 23 and 24, 1915, briefly summarized shows the following facts:

The Whitley County Telephone Company's lines run upon the principal highways of Whitley County, and are serving between 1900 and 2000 subscribers, a portion of which are located in Allen County and served through the exchange located at Arcola; the Farmers Mutual Telephone Company has approximately 1790 subscribers located in Whitley County; the Farmers Mutual Telephone Company's lines parallel the lines of the former company upon many of said highways; practically all of the main traveled roads of Whitley County are covered by both companies and each company maintains exchanges at Columbia City, Laud, South Whitley, Larwill and Etna, and are competitors in business at said points, as well as on the rural lines thereof; approximately 250 subscribers, mostly in business houses and offices, have the 'phones of each company; each company at the time of the hearing had toll lines by which they could reach points beyond Whitley County, but from the revenues derived from this class of business, the Whit-

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ley County Telephone Company evidently performed very much the greater toll service, as the receipts of this company for the fiscal year amounted to \$4631, whereas the revenues of the Farmers Mutual company only amounted to about \$150 for the same period.

The Whitley County Telephone Company has outstanding \$90,000 of common stock and \$10,000 of preferred stock. An inventory and valuation made by the company of its property shows it to be worth \$125,290.43, with cash amounting to \$2,013.81, or total assets of \$127,304.24, subject to some modification on account of the time when the valuation was made and the depreciation that was assigned to its several parts, which was theoretically made, rather than by personal inspection of the different items of the property. The company has an indebtedness of \$7,500, so that the total value of the property, free of indebtedness, excepting preferred stock, would be slightly in excess of \$100,000.

The Farmers Mutual Telephone Company was organized in 1903, with a paid-up capital stock of \$24,000, and from the surplus revenues of the company it has extended its plant and lines from time to time until its present physical valuation is approximately \$100,000, with a bonded indebtedness of \$16,100. The net earnings invested in the plant amount to about \$60,000.

The telephones of the different companies are distributed throughout Whitley County at their various exchanges, except the Whitley County Telephone Company's 'phones located in Allen County connected with its Arcola exchange as follows:

	<i>Whitley County company</i>	<i>Farmers company</i>	<i>Churubusco company</i>
Columbia City	1070	797	....
South Whitley	488	340	....
Larwill	23	266	....
Laud	14	287	....
Etra	114	95	....
Arcola	208	....	....
Churubusco .....	....	....	700
TOTAL	1917	1785	700

The maps submitted by the companies show the location of their lines in Whitley County, and indicate that the pole mileage of the Farmers Mutual is greater than that of the Whitley County company, but that the Whitley County company's lines more nearly cover the eastern portion of the county than the lines of the other company, while the Farmers Mutual company's lines more nearly cover the northwest and southern portion of the county, but much the larger portion of the lines of the two companies are duplicated.

The evidence further shows that it would be beneficial to the subscribers of the two companies if the lines were connected, whereby communication could be had between subscribers of both companies, and that further benefit would occur in this—that in instances where but few persons were on a rural line of one company, the subscribers might be transferred to the other having the greatest density of business, and the lines thus stripped of 'phones might be dismantled and the salvage used at some other point for repair or extension, and thus lessen cost of installation and maintenance. The fact that the Whitley County Telephone Company has a larger per cent. of subscribers in the towns, while the Farmers Mutual has a larger per cent. of subscribers on its rural lines than the other company, physical connection would probably enable the companies to serve the public in the future with less duplication of lines.

The evidence shows, we think without question, that physical connection can be made between the properties of these companies without irreparable injury to the defendant company or to any user of its equipment, nor will it be of any substantial detriment to the service to be rendered by said defendant or any of its users of service; nor will such physical connection be of injury to the petitioner's property or to the users of its service, or be of any substantial detriment to the service to be rendered by it; that a public necessity and convenience require the use resulting from such connection.

The evidence as to the cost of physical connection at the various exchanges in said Whitley County, shows that the same can be effected without large expenditure, not exceeding \$100 at each exchange. The evidence does not satisfactorily show what the additional cost of operation would be in the event of physical connection of the two properties. The evidence is somewhat conflicting upon this subject. It is, we think, within reason that the cost to the companies would not be great. It is the duty, under the law, of the companies to observe accounting as heretofore ordered by the Commission, so that it will appear from time to time what the cost of operation is, and the companies will be better able by their actual experience after physical connection, to tell what the additional cost is, and from information thus obtained the Commission can determine what ought to be allowed the companies on account of the increased business, resulting from such physical connection, as we are of the opinion that in this case the companies ought not to be required to render interchange service free, and with the actual cost before us for this service we will be in better position to determine what, if any, switching fee should be paid by the subscribers; or in what manner the companies or either of them should receive compensation on account of any additional expense by reason of additional service thus rendered.

As to the service rendered by the Churubusco Telephone Company for the subscribers of the Whitley County Telephone Company, the Commission is of the opinion that such service should be paid for at the same rate as is paid to said company by the subscribers of the Farmers Mutual Telephone Company. The evidence shows that a switching fee of 10 cents is charged the Farmers Mutual subscribers for switching to the Churubusco patrons, and the service is rendered free to the subscribers on the lines of the Whitley County Telephone Company. There should, we think, be a fee of 5 cents paid for this service by the subscribers of both companies.

In reference to the long distance service rendered for the parties hereto out of Etna, the company performing such service is not before us and as to that service we make no finding at this time.

The Commission having heard the argument of counsel in this case by briefs, and being advised,

It is, therefore, ordered, That physical connection be made between the lines of the Whitley County Telephone Company and of the Farmers Mutual Telephone Company, parties hereto, at the exchanges of said companies located in Columbia City, South Whitley, Larwill, Laud and Etna.

It is further ordered, That the expense of making such physical connection shall be borne equally by said telephone companies, and that said physical connection shall be made under the supervision and direction of the Whitley County Telephone Company, and an itemized, verified statement of the cost thereof shall be submitted to the Commission, and to the said Farmers Mutual Telephone Company, and said Farmers Mutual Telephone Company shall pay one-half of such cost within ten days after the submission of said verified statement.

It is further ordered, That said telephone companies shall keep an accurate account at each of said exchanges of the amount of interchange switching done under and by virtue of this order, and shall accurately submit a statement of such exchange switching, showing amount of such work month by month for a period of six months, beginning September 1, 1915, thus enabling the Commission thereafter to fix the cost and charges for said companies and by the subscribers so receiving such interchange or switching service.

It is further ordered, That the compensation and charges to be fixed on account of interchange service resulting from the physical connection herein ordered, shall be made by the Public Service Commission of Indiana, after receiving the information as to the amount of said service as herein ordered, and such compensation and charges shall relate to and from the first day of September, 1915.

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It is further ordered, That physical connection shall be made and become effective as to service to be rendered by said companies hereunder, from and after September 1, 1915.

Indianapolis, Indiana, August 5, 1915.

PIKE COUNTY TELEPHONE COMPANY v. FLINT-KYLE TELEPHONE COMPANY.

No. 1462.

Decided August 5, 1915.

Establishment of Physical Connection Denied Where Not Demanded by Public Convenience and Necessity and Where Irreparable Injury to Company with Which Connection is Sought Would Result.

APPEARANCES:

For plaintiff, Pike County Telephone Company, *Mattingly and Meyers and Korbly and New.*

For Flint-Kyle Telephone Company, *J. N. Flint.*

For intervenors, Central Union Telephone Company, *R. F. Davidson.*

OPINION AND ORDER.

Plaintiff alleges that it is a corporation duly organized and doing business under the laws of the State of Indiana, and is engaged in the telephone business with its principal place of business in the town of Petersburg, Pike County, Indiana; that it has plants at the towns of Pike and Monroe City, in the county of Knox, and the city of Washington, in Daviess County, Indiana, all of which are connected by proper wires and poles; that at said city of Washington it owns and operates an automatic telephone plant, which has not been in operation to exceed six months last past, with about 800 subscribers in said city and the adjacent territory in said county; that said automatic plant has connections at Plainville, Glendale and Alfordsville in said county, and at Loogootee, in Martin County, Indiana; that the

Flint-Kyle Telephone Company owns and operates telephone plants at Montgomery, Epsom and Oden in said Daviess County, with subscribers numbering 400 or 500, the exact number not being known to plaintiff, in said towns and the adjacent territory; that plaintiff entered into a contract with the predecessor of said Flint-Kyle Telephone Company in ownership of said three plants for exchange of service, but said Flint-Kyle Telephone Company has refused, and now refuses, to make such connection and exchange for such service; that such exchange of service would be of benefit to the plaintiff and to said Flint-Kyle Telephone Company and would in no manner injure or damage the latter named company or any of its patrons or customers; that said last named company, through its manager, has offered to interchange service with the plaintiff herein for the sum of \$50.00 per month to be paid to said Flint-Kyle Telephone Company by the plaintiff and not otherwise; that said demand is unreasonable; that said Flint-Kyle Telephone Company is exchanging service free with the Central Union Telephone Company at Washington, Indiana, but refuses a like service to this plaintiff, for the purpose of discriminating against it; that said Flint-Kyle Telephone Company, through its manager, has heretofore verbally promised and agreed with the plaintiff to exchange service as soon as plaintiff should begin operating at said plant at Washington, Indiana, but that, as plaintiff believes, he now refuses to do so through fear that the Central Union Telephone Company will discontinue service to his company if he connects with the lines of this plaintiff on the same terms that is given to the Central Union Telephone Company; that one of the inducements of the plaintiff to build its new plant at Washington, Indiana, was the belief that such connection could and would be had with the Flint-Kyle Telephone lines on like terms with other telephone companies in the same field, and the plaintiff has a line of poles for its Loogootee line leading to the town of Montgomery, ready to be wired for such connection; that such exchange of service will promote the interest of all parties concerned, and will in no manner injure

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any of them and will be of great public benefit and will not injure the service of either company.

Said petitioner prays that an order be issued requiring said Flint-Kyle Telephone Company to furnish free exchange connection to said plaintiff, or to furnish the same on the same terms and conditions which it supplies such exchange to all other companies.

The Flint-Kyle Telephone Company, defendant, files an answer in general denial.

The Receivers of the Central Union Telephone Company, after leave granted, filed their intervening petition alleging, in substance, that they were duly appointed Receivers of the Central Union Telephone Company by the Superior Court of Marion County, Indiana, February 2, 1914; that said Central Union Telephone Company is a public utility engaged in the telephone business within and without the State of Indiana, and that it has an exchange in the city of Washington, Daviess County, Indiana, and other connecting exchanges and lines in and through the counties of Daviess, Pike, Martin and other adjacent counties; that said Central Union Telephone Company has connection with the telephone plant and system of the Flint-Kyle Telephone Company, with which company the plaintiff has prayed the Commission for an order of connection; that the arrangement between intervenors and said Flint-Kyle Telephone Company, governing the exchange of business between them is satisfactory to both parties and by reason of said arrangement the interest of the users of telephone facilities through the county served by these intervenors to the said Flint-Kyle Telephone Company are adequately cared for, and that there is no demand upon their part for making the connection prayed for by the plaintiff; that the connection asked by the plaintiff, if granted, would result in no advantage to said Flint-Kyle Telephone Company, or to any of its patrons, or to any of the patrons of the said Central Union Telephone Company, but would subject the lines of said Flint-Kyle Telephone Company to such demands as to greatly hamper and impair their use for the purpose for which they are now devoted; that pub-

lic convenience and necessity do not require the connection prayed for by the plaintiff; that the making of such connection would result in irreparable injury to the owner and other users of said Flint-Kyle Telephone Company, including the intervenors herein.

Said intervenors, the Receivers for the Central Union Telephone Company, pray that the complaint be denied.

The Commission having heard the evidence in the above entitled cause, and the argument of the counsel by briefs, and being well advised in the premises, finds that physical connection between the lines of the Pike County Telephone Company and the Flint-Kyle Telephone Company, at the latter's exchange in the town of Montgomery, Indiana, is not a public convenience and necessity, and the use through such connection of the Flint-Kyle Telephone Company's lines will result in irreparable injury to the owner thereof, as testified to by Mr. Flint, and other users of such equipment, and such connection and use will result in detriment to the service to be rendered by such owner or through users of such equipment, to-wit: the Receivers of the Central Union Telephone Company.

It is, therefore, ordered by the Public Service Commission of Indiana, That the petition in the above entitled cause shall be and is hereby denied.

August 5, 1915.

MICHIGAN.

Railroad Commission.

**IN THE MATTER OF THE APPLICATION OF CITIZENS TELEPHONE
COMPANY TO EXTEND ITS TOLL LINE FROM GOBLEVILLE
TO LAWRENCE.**

D-912.

Decided June 29, 1915.

**Extension of Line into Occupied Territory Authorized Where Occupying
Company Refuses Physical Connection.**

ORDER.

Application was filed in the above entitled matter on the nineteenth day of October, A. D., 1914, and an order of hearing in pursuance of such application having been fixed for Thursday, the thirteenth day of May, A. D., 1915, at 11:00 A. M., at the office of the Commission in the city of Lansing, at which time *Mr. C. E. Tarte*, general manager, appeared on behalf of said telephone company and *Dr. O. M. Vaughan*, president of the Kibbie Telephone Company and *Mr. W. J. Berry*, agent, Michigan State Telephone Company, in opposition.

From the testimony and evidence offered in support thereof, it appears that the request for the line has been brought to the attention of this Commission by the Lawrence Mutual Telephone Company as a public necessity, claiming that the long distance or toll service they are now compelled to use through the several mutual companies is not adequate for long distance conversation, as many of the circuits that they use are over rural lines not considered as toll lines, and that they, the Lawrence Mutual Telephone Company, and all other so-called independent telephone companies in that locality are refused the physical connections with the Kibbie Telephone Company and the Michigan State Telephone Company. In view of the fact that

when a company refuses physical connection, it is not in a position to object to competitive construction as might be allowed under an application of public convenience and necessity, and also that it appears that the public would be better served by the construction and operation of toll line referred to in the application.

Therefore, by virtue of the authority vested in us by law,

We do hereby authorize, The said Citizens Telephone Company to construct, maintain and operate toll line as shown in map submitted and made a part of above application.

Dated June 29, 1915.

IN THE MATTER OF THE APPLICATION OF SOUTHERN MICHIGAN
TELEPHONE COMPANY FOR LEAVE TO INCREASE TELEPHONE
RATES, RENTALS AND CHARGES.

D-914.

Decided July 23, 1915.

Increase in Exchange Rates Authorized.

Petitioner sought authority to increase its rates for local, toll and switching service upon the consolidation of its system with formerly competing systems.

Petitioner and Michigan State Telephone Company by authority of the Commission, had exchanged certain properties and had bought the properties of several smaller companies in order to eliminate duplication of facilities. Among the exchanges taken over by the applicant were some whose rates were less than those charged by the applicant's exchange operating in the same territory, and applicant believing that its own rates, though higher, were insufficient to produce the necessary revenue that a reasonable up-keep and fair return required, and also in order to eliminate discrimination, proposed an increase of all rates, both its former rates and the rates formerly charged by the exchanges which it had acquired, and also proposed an increase in switching charges applicable to rural companies entering the exchange at Quincy, this exchange being one of the properties recently acquired by the applicant.

Protest was made that the value of the combined properties of the applicant as shown by an appraisal submitted with the application was

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excessive and paved the way for the company to demand, in order to produce a reasonable return thereon, a higher rate than was necessary. As the rates paid previous to the merger had no bearing on, or relation to, the rates proposed to be charged in the future, which should be based upon the necessary investment now and in the future in use for the purpose of furnishing the quality and quantity of service demanded by the subscribers, it became necessary to find the present value of the property.

The Commission thereupon ordered an audit of the applicant's books and also an appraisal of the properties charged into the capital account of the applicant. This audit and appraisal showed that there had been no fraud or misappropriation of funds, that the facilities were ample and were of such a nature and in such condition as to enable the company to render adequate service, and that an increase in revenue was necessary to protect the investment, as the present balance sheet showed a deficit.

Held: That the proposed rates cannot be termed excessive or unreasonable in the gross return which they will yield when all the elements of expense, including a proper reserve for depreciation, are considered, that they will necessitate new economies to meet the new needs incident to operating the several properties under the merger;

That the rates proposed should be charged, the net rate to apply if payment be made within the first thirty days of each calendar quarter, the gross rate to apply if payment be made after the first thirty days.

Practice of Paying Dividends When No Reserve for Depreciation Has Been Made Improper.

Held: That the practice of paying dividends, although a 5 per cent. reserve for depreciation had not been set aside annually, was improper.

Increase in Toll Rates Authorized.

Held: That the proposed increase in toll rates should be granted since said rate is based upon the rate charged by other telephone companies rendering similar service throughout the State, and appears reasonable and warranted in view of the investment in toll lines, and also considering that the deficit as shown in exhibits offered in evidence is not covered by the increase in rentals asked for;

That the charge of toll between exchanges not only increases revenue and reduces operating expenses, but improves the efficiency of that part of the service;

That a toll charge at the rate of 10 cents for the first 12 miles or fraction thereof and 5 cents for each additional 8 miles or fraction thereof should be made on all messages going to or through two or more exchanges.

Increase in Switching Rate Authorized.

Applicant sought authority to increase its charge for switching rural telephone companies connected with the switchboard at Quincy from

\$3.00 to \$6.00 per year maintaining that the operating expense at Quincy was in excess of \$6.00 per year per subscriber.

Held: That considering the charges of other companies for like service and the advantages and enhanced opportunities for additional revenue through toll charges, it would seem reasonable to consider the present charge of \$3.00 too low, yet the requested charge of \$6.00 too high, and that a charge of \$4.50 per year for switching each subscriber would be fair.

APPEARANCES:

Hon. John W. Adams, Hon. E. E. Palmer, Hon. Dallas Boudeman, for petitioner.

Hon. W. H. Lockerby, Hon. Milo D. Campbell, Mr. W. G. Cowell, for protesting subscribers.

OPINION.

Telephone service prior to December 10, 1914, in the southwest portion of the State was given by the Michigan State Telephone Company, the petitioner, (Southern Michigan Telephone Company) and several other independent and mutual telephone companies. These companies, in many instances, were organized originally not for profit but for neighborhood convenience, and extended to each other free service. Whether as the result of better care and management or more favorable conditions, some were more successful than others and by giving good service were able to expand and quite successfully meet the demands of the locality; in some instances, however, serving only the people of a single township. In other instances these lines were extended into villages, towns and cities and there were established exchanges, and the establishment of the separate exchanges necessitated the maintenance by many subscribers of two or more 'phones. Some of the lines failed to be maintained so as to give good service but those which were so maintained and thereby enabled to handle long distance messages did not prove to be profitable. On the other hand, such subscribers as found it necessary to maintain two or more 'phones, began to complain of the unnecessary burden imposed incident to such dual service.

Previous to December, 1914, applications were received by the Commission from the officers of the several companies operating in the counties of Branch and St. Joseph and adjoining territory for authority to buy, sell and exchange certain properties, to the end that some one company might occupy a given territory and, having this business to itself, might be able to reduce expenses, relieve subscribers of the expense of maintaining more than one 'phone and be enabled to give better service. The stronger companies in that territory were the Michigan State Telephone Company and Southern Michigan Telephone Company, and applications were filed with the Commission by those companies for permission to exchange certain properties and by the smaller companies for permission to sell their property to the Southern Michigan Telephone Company, which was to remain in that territory. Thus would be removed all duplication and effected a saving to such community of a large amount of money annually, as hereafter shown. Proceedings were had upon such applications and pending the decision thereon the regularly constituted authority of every city and village located in the territory affected, together with approximately three thousand subscribers, petitioned the Commission to allow the consolidation, thereby evidencing what might reasonably be accepted as the unanimous desire of the public in that territory.

As to the value of the property of the Southern Michigan Telephone Company, two appraisals had been made by two different parties at different times, as hereinafter referred to, and these were filed with the application. These appraisals, together with the appraisal of all the properties merged, was made before any exchange or sale of the several properties was concluded and the prices or value at which such properties were exchanged or sold was upon the valuation thus obtained and which appeared to be satisfactory to all parties in interest, all of which more fully appears in the opinion* filed by the Commission when the

* See Commission Leaflet No. 38, p. 652.

merger was authorized and to which special reference is made.

It appears that among the exchanges taken over by the Southern Michigan Telephone Company there were some whose rates were less than those charged by the Southern Michigan Telephone Company operating in the same territory, and the company, believing that its own rates, though higher, were insufficient to produce the necessary revenue that a reasonable up-keep and fair return required, and also to eliminate discrimination in accordance with the requirements of law, sent out notice of a proposed advance in rates. They did this, however, before obtaining from the Commission permission to do so. This was reported and the Commission advised the company not to make any advance in rates until a proper application for authority to do so had been made, a hearing had thereon and order issued. At the hearing the proposed change in rates denoting an advance was protested by some of the subscribers, they being represented by counsel. At the same time that notices of this proposed advance in rates were sent out, a notice also of the proposed advance to be made in the switching charges for service rendered the roadway companies entering the exchange at Quincy was mailed, this exchange being one of the properties recently acquired by the Southern Michigan Telephone Company.

At the hearing, counsel for protestants contended that the value of the combined properties, and especially that of the Southern Michigan Telephone Company as shown by appraisal submitted, was excessive and unreasonable and only paved the way for the company to demand, in order to produce a reasonable return thereon, a higher rate than was necessary. Whereupon, to the end that the Commission's previous investigations might be verified and the public interest fully protected, the Commission ordered an audit of the books of the Southern Michigan Telephone Company by the Detroit Trust Company.

The property of the Southern Michigan Telephone Company was appraised in 1912 by Mr. W. O. Morsman, of

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Chicago, an experienced telephone engineer of good repute, and in 1914, or two years later, the Manufacturers Appraisal Company of Cleveland appraised the property of the Southern Michigan Telephone Company and the result of such appraisal approved the work and figures of Mr. Morsman as made and showed the value of the same property to that date. To the end that as much reliable information as possible might be obtained for the guidance of the Commission, Mr. C. B. Hall, a telephone expert in the employ of the State, was directed to make a careful examination of both the physical and operating conditions of the several exchanges which composed the new or merged property and his final figures show that the values at which the several properties have been charged into capital account of the Southern Michigan Telephone Company are approximately correct. At the time that the audit of the books of the Southern Michigan Telephone Company was being made, there was present an expert accountant setting up the new system of accounting as prescribed by the Interstate Commerce Commission and he too became conversant with the conclusions reached by the Detroit Trust Company making the audit, and it appears that when the audit was finished the parties joined in the statement that no evidence had been found or presented showing that any misappropriation of funds had been made.

It is admitted that the old books of the Southern Michigan Telephone Company, containing a record of its operations previous to 1912, when the Morsman appraisal was made and new books were opened, (except the minute book, giving a complete record of all meetings where authority was given to the officers to make any disposition of stock or bonds or use of cash) had been destroyed. From this original record, however, the Trust company states it was able to secure sufficient data to guide it safely in determining whether or not the capital account of the company was unduly large or contained entries not properly belonging there.

The total amount of items about which there was any question whatever, as being properly chargeable to capital account, (and which the Interstate Commerce Commission in its form of accounting contend should be so treated) aggregate \$196,062.52 and this amount, upon the recommendation of the Commission's expert, was deducted. We do not feel, therefore, that the absence of the old books of the company interfered with obtaining such information as enabled the Trust company and later the Commission to intelligently pass upon the question at issue, viz: the present value of the property, and it appears to us these are the important questions, for the rates paid on the amount invested by the company previous to the merger have no bearing upon, or relation to, the rates now proposed to be charged in the future, which must, in all fairness, be based upon the necessary investment now and in the future in use for the purpose of furnishing the quality and quantity of service demanded by the subscribers.

Petitioner contends that the increased rates and rentals asked for will produce no greater sum than what might be deemed a reasonable return upon the money actually employed, after paying necessary maintenance and operating expenses and a study of the figures shown on page 8 would appear to support their contention.

For additional information, a representative of this Commission, as previously stated, made a personal investigation of the physical and operating conditions of each and every exchange named in the application and also the Detroit Trust Company has made to this Commission a report as of May 31, 1915, verifying the capital and plant accounts of the Southern Michigan Telephone Company showing when and where and under what terms and conditions the securities were issued and disposed of. From the foregoing may be summarized:

First. The record discloses no indication of fraud or misappropriation of funds.

Second. The facilities are ample and of such nature and in such condition as to enable the company to render adequate service.

Third. That an increase in revenue seems necessary to protect the investment.

As bearing upon the first matter mentioned, there has been filed the official report of the Detroit Trust Company as above stated, substantiating the accounts of "Plant in Service", "Intangible Capital", "Capital Stock" and "Bonds" in conforming the charges to the schedule of accounts as prescribed by the Interstate Commerce Commission as follows:

1. Plant in service (per exhibit filed).....	\$1,190,461 18
2. General equipment (tools, etc.).....	4,812 72
3. Intangible capital (per exhibit filed).....	55,563 18
4. Unamortized debt and discount expense.....	14,237 29
5. Other deferred debts (including merger items in suspense)	48,619 30
6. Total recorded in balance sheet.....	\$1,313,693 67
7. Items lost in the accounts charged to surplus (dif- ference between appraised structural value as in- ventoried in 1912 and fair book value).....	157,565 36
8. Interest on merger loans.....	14,567 51
9. Realized depreciation on property sold.....	23,929 65
10. Total plant and expenditure on which stockholders should receive returns, as prescribed by the Inter- state Commerce Commission accounting.....	\$1,509,756 19
11. Capital stock — authorized \$1,000,000 — issued.....	\$342,580 00
12. Bonds — authorized \$500,000 — outstanding	359,200 00
	<hr/> \$1,201,780 00

As to the second matter, "Facilities and Adequate Service" this is fully covered by the inventory and appraisal made in 1912 by Mr. W. O. Morsman, as corroborated and fully substantiated by the Manufacturers Appraisal Company of Cleveland, Ohio, under date of May 15, 1914, and also by the detailed report of our own representative made from personal inspection and investigation.

Third, as to the necessity for increased revenue; conclusions are deducted from the balance sheet, income state-

ment and expense schedule, taken from the books of the company as of March 31, 1915, setting forth the actual figures for the first quarter, and from that, a recapitulation for the year, showing the following results:

Total telephone revenue for year on basis of actual first three months. \$131,088 36

Total "operating" expense not including the following: \$145,744 16

Total deductions:

Uncollectible revenue.....	\$689 92
Taxes.....	10,582 36
Rent, offices, etc.....	4,996 24
Interest on funded debt.....	21,315 00
Other interest.....	2,805 52
Amortization.....	946 64
	<hr/>
	41,335 68

Total deficit..... \$55,991 48

\$187,079 84 \$187,079 84

We think of the above "deductions" there will be no question but that at least the two items of taxes and rentals should be added to the operating expense as entirely dependent upon revenues for their payment and as properly affecting the rate which should be charged. These two items amount to \$15,578.60 which, added to the operating expense of \$145,744.16, totals \$161,322.76. From this amount deduct the total revenues (not including tolls) of \$131,088.36 and a deficit of \$30,234.40 results. As shown elsewhere, the total increase in revenue from the increase in rates would amount to \$25,071, that is, providing each subscriber continues his present class of service. It therefore seems evident that the proposed rates cannot be termed excessive or unreasonable in the gross return they will yield when all the elements of expense, including a proper depreciation, are considered and will necessitate new economies to meet the new needs incident to operating the several properties under the merger. In fact, the rates will not be higher than in other parts of the State where like quality of equipment is used and service given.

Again, the necessity for increased revenue seems apparent when all figures are reduced to the average of each subscriber to the whole amount, as shown by the following tabulation from figures submitted:

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Plant in service, average station valuation.....	\$110 15	
Total recorded in balance sheet, average station valuation	121 67	
Total investment and expenditures on which returns should be made, average station valuation.....	139 81	
<hr/>		
Not included in the above and which must be considered are the total of toll lines.....	\$291,320 09	
And the amount properly chargeable to the several ex- changes but not distributed.....	32,236 21	
	<hr/>	\$323,556 30
<hr/>		
Total revenue, average per station.....	\$15 36	
Total operating expense and interest on bonds, average per station.....	\$17 08	
Total deductions, average per station.....	4 84	6 56
	<hr/>	<hr/>
	\$21 92	\$21 92

In addition to this showing of present deficit, there appears a saving to the subscribers in the communities involved in these applications, by eliminating duplications, \$22,104, or an average of \$3.09 per subscriber affected, and that the probable result of the rental increase as asked for would amount to \$25,071 or \$3.01 per subscriber of the community affected.

Dividends declared 1904 to 1912 inclusive, as shown by the audit, amounted to \$267,482.21, and the depreciation for same period at 5 per cent. *not charged off* would have been \$216,181.40 showing that dividends were paid for that period instead of creating a depreciation fund as should have been done.

Relative to that part of the applications affecting toll charges; the proposed rate is based on present practice of other telephone companies rendering similar service throughout the State and appears reasonable and warranted in view of the investment in toll lines as shown in balance sheet and inventory,—\$291,320.09, before referred to, and also considering that the deficit as shown in exhibits offered in evidence *is not covered* by the increase in rentals asked for, and it appearing that the charge of toll between exchanges not only increases revenue and reduces

operating expense but improves the efficiency of that part of the service, is the basis for favorable decision on that portion of the applications.

Under separate notice, but made a part of these applications, as previously referred to, is the request for permission to increase switching charges for rural telephone companies connecting with the switchboard of the Southern Michigan Telephone Company at Quincy, Branch County, from \$3.00 per year, as now charged, to \$6.00 per year. From the testimony and evidence in support thereof it appears that the company considers its request well founded on the showing of operating expense at the Quincy exchange to be in excess of \$6.00 per year per subscriber, but considering the charges of other companies for like service, and the advantages and enhanced opportunities for additional revenue through toll charges, it would seem reasonable to consider the present charge of \$3.00 too low, — yet, the requested charge of \$6.00 too high. Hence the opinion that \$4.50 per year for switching each subscriber is fair.

From all the foregoing and the further fact that the committee and attorneys for subscribers in opposition failed to show error in the evidence from which these figures are taken, it is the opinion of this Commission that a temporary order should issue and the petitioner be allowed to enjoy the benefit of the rates named therein for the term of one year from the effective date thereof, and for the purpose of ascertaining just what results the new rates will produce, at the expiration of such period present to the Commission a detailed statement of earnings and expenditures for such year, when, upon such showing, the above order should be approved, or modified as conditions justify.

ORDER.*

* * * * *

We do hereby authorize, The said Southern Michigan Telephone Company to publish and make effective as of

* The formal portions of the order are omitted.

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the first day of August, A. D., 1915, the following schedule of rentals, rates and charges for service furnished by the lines and telephone facilities of the said Southern Michigan Telephone Company as proposed in the published notices hereinbefore mentioned:

TELEPHONE RATES AND CHARGES FOR THE SOUTHERN MICHIGAN TELEPHONE COMPANY

Coldwater and Union City Exchanges

One-party business.....	Net rate, \$36.00	Gross rate, \$39.00 per annum.
Two-party business.....	Net rate, 30.00	Gross rate, 33.00 per annum.
Four-party residence.....	Net rate, 15.00	Gross rate, 18.00 per annum.
Two-party residence.....	Net rate, 18.00	Gross rate, 21.00 per annum.
One-party residence.....	Net rate, 21.00	Gross rate, 24.00 per annum.
Rural party residence.....	Net rate, 15.00	Gross rate, 18.00 per annum.
Rural party business.....	Net rate, 18.00	Gross rate, 21.00 per annum.

Bronson and Quincy Exchanges

Business telephone.....	Net rate, \$24.00	Gross rate, \$27.00 per annum.
Residence and rural.....	Net rate, 15.00	Gross rate, 18.00 per annum.
Rural business.....	Net rate, 18.00	Gross rate, 21.00 per annum.

Sherwood, Girard, Batavia and East Gilead Exchanges

Business telephone.....	Net rate, \$18.00	Gross rate, \$21.00 per annum.
Residence and rural.....	Net rate, 15.00	Gross rate, 18.00 per annum.

Sturgis and Three Rivers Exchanges

One-party business.....	Net rate, \$36.00	Gross rate, \$39.00 per annum.
Two-party business.....	Net rate, 30.00	Gross rate, 33.00 per annum.
Four-party residence.....	Net rate, 15.00	Gross rate, 18.00 per annum.
Two-party residence.....	Net rate, 18.00	Gross rate, 21.00 per annum.
One-party residence.....	Net rate, 21.00	Gross rate, 24.00 per annum.
Rural party residence.....	Net rate, 15.00	Gross rate, 18.00 per annum.
Rural party business.....	Net rate, 18.00	Gross rate, 21.00 per annum.

Burr Oak, Colon, Centreville, Constantine, Mendon and White Pigeon Exchanges

Business telephone.....	Net rate, \$24.00	Gross rate, \$27.00 per annum.
Residence and rural.....	Net rate, 15.00	Gross rate, 18.00 per annum.
Rural business.....	Net rate, 18.00	Gross rate, 21.00 per annum.

Jones, Leonidas and Parkville Exchanges

Business telephone.....	Net rate, \$18.00	Gross rate, \$21.00 per annum.
Residence and rural.....	Net rate, 15.00	Gross rate, 18.00 per annum.
Rural business.....	Net rate, 18.00	Gross rate, 21.00 per annum.

Wasepi exchange will be discontinued and the subscribers connected with the Colon, Mendon and Centreville exchanges.

The net rate to apply if payment is made within the first thirty days of each calendar quarter. The gross rate to apply if payment is made after the first thirty days.

Rentals are payable at the office of the exchange to which the subscriber is connected.

A toll charge at the rate of 10 cents for the first twelve miles or fraction thereof, and 5 cents for each additional eight miles or fraction thereof, will be made for all messages going to or through two or more exchanges. A charge of 5 cents will be made to non-subscribers for calls within any exchange limit.

For switching charges for all rural lines or telephone companies connecting with the switchboard at Quincy, Branch County, \$4.50 per annum for each subscriber, payable semi-annually in advance.

The above rates to be and remain in effect for the term of one year from August 1, 1915, at the expiration of which time the petitioner will file with the Commission a detailed statement of all receipts and expenditures incident to the operation of the plant for such time and, upon such showing, the Commission will either approve and continue in force the above order or make such other order as, in the judgment of the Commission, the conditions justify.

Dated July 23, 1915.

MINNESOTA.

Railroad and Warehouse Commission.

**IN THE MATTER OF INCREASES IN RATES SUBSEQUENT TO THE
PASSAGE OF THE TELEPHONE ACT, BUT PRIOR TO THE EF-
FECTIVE DATE THEREOF.**

Dated July 9, 1915.

**Rates in Force on Effective Date of Telephone Law Presumed to be
Reasonable Although Increased Subsequent to the Passage
of said Law, but Prior to the Effective Date
Thereof.**

INFORMAL RULING.

The Commission is in receipt of your letter of June 30 wherein you request it to require the telephone companies to restore the toll rates which were in effect at the time of the passage of the Telephone Act, Chapter 152 of the Laws of 1915.

The law passed at the last session of the legislature vested the Commission with jurisdiction and supervisory power over telephone companies upon the first day of July, 1915. Prior to that date, the Commission had nothing whatever to do with either the rates or the service of telephone companies. On May 1 the Northwestern Telephone Company, and on June 1 the Tri-State Telephone Company, put into effect new schedules of toll rates. These schedules substantially increased the rates between many points in the State. Section 5 of the Act requires the telephone companies to file with the Commission a schedule of its exchange rates, tolls and charges for every kind of service, and Section 7 provides that whenever such rates or schedules are found to be unreasonable by the Commission, it shall prescribe reasonable rates to take the place of the rates or schedules superseded. No rates so filed shall be

changed by any telephone company without an order of the Commission.

The legislature is presumed to know what it was about when it enacted this law. It could have maintained the old status by declaring in the law that the telephone companies should file with the Commission the rates which were in effect at the time of the passage of the Act and by providing that no such rates could be changed without the consent of the Commission. This would have thrown the burden of proof upon the telephone companies in each instance where an advance was requested. Not having incorporated such a provision in the law, the Commission had no power to prevent the telephone companies from changing or advancing their rates prior to the first day of July. The rates which were in effect upon the first day of July and filed with the Commission are presumably reasonable and the burden of proof is now upon the State to show that the same are unreasonable. The fact that lower rates have been in effect for a long period of time is not conclusive evidence that the present rates are unreasonably high. The unreasonableness of a rate can only be determined after an investigation, and an order of the Commission reducing rates without such investigation would be void.

This new legislation has imposed a large burden upon the Commission. The regulation of the service and the rates of the many telephone companies in the State must conform to the law and must be fair and reasonable both to the public and to the companies. The Commission is not disposed to shirk its responsibility and in the investigation of the many questions which will arise, it intends to proceed with deliberation so as to best safeguard the interests of the public as well as the companies.

Your letter, together with the map attached showing changes in rates from Minneapolis to different points in the State will be placed on file and given due consideration by the Commission.*

* Letter of the Commission to W. P. Trickett, Traffic Director, Minneapolis Civic and Commerce Association. July 9, 1915.

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IN THE MATTER OF THE ISSUANCE OF INDETERMINATE PERMITS.

Dated July 21, 1915.

Procedure to be Followed in Applying for Indeterminate Permits Outlined — Jurisdiction of Commission to Issue Such Permits Stated — Effect of Substitution of Indeterminate Permit for Franchise Explained.

INFORMAL RULING.

You have submitted to the Commission several applications by telephone companies for indeterminate permits and you ask what authority this Commission has to issue the same and what the practice should be.

The practice in such cases is regulated by Section 15 of the Act, which provides that a telephone company shall receive an indeterminate permit by surrendering its franchise to the municipality by filing with the clerk a written declaration to that effect. Thereupon the clerk shall file with the Commission a certificate showing that fact and the date thereof, and it shall then be the duty of the Commission to execute an indeterminate permit to the company, the same to be held under all of the terms, conditions and limitations of this Act.

Heretofore municipalities acting as agents of the State have issued franchises to telephone companies. The State has the superior authority and may permit a telephone company to surrender its franchise and issue in lieu thereof an indeterminate permit. Where a telephone company complies with the law, the Commission must execute an indeterminate permit. The law is mandatory. Where the certificate issued by the clerk is proper upon its face the Commission need not go behind that certificate to make an investigation. The certificate from the clerk should show the statutory requirements, which are that the company operates under an existing license, permit or franchise and that it has filed a written declaration of the surrender and the date thereof.

The indeterminate permit is not defined in the Act. Statutes in other states as well as decisions of the courts have

defined such permit to be the right to operate within the municipality for an indefinite period, coupled with a right of the public to purchase the same. When such permit is issued it takes from the local government all the right it formerly possessed to regulate the service and the rates of such company, leaving to it only the power to regulate the location of poles and wires so as to permit no interference with the safe and convenient use of streets and alleys by the public. Questions affecting service and the rates of said companies are vested in the Commission. Contracts which had been duly executed between the telephone company and the municipality for the furnishing of any service free or at reduced rates to the public may remain in effect. This is expressly provided by the language in Section 11, which reads as follows:

“Provided that nothing herein shall release any telephone company from carrying out any contract now existing between it and any municipality for the furnishing of any service free or at reduced rates.”*

In re PURCHASING OF PROPERTY OR SECURITIES OF ONE TELEPHONE COMPANY BY ANOTHER.

Dated July 21, 1915.

Procedure to be Followed in Purchase of Property or Securities of One Telephone Company by Another.

INFORMAL RULING.

Section 20 of the Telephone Act makes it unlawful for any telephone company to purchase the property or capital stock, bonds or other obligations of any other telephone company doing business within the State without first obtaining the consent of the Commission thereto. Telephone companies are permitted to hold stock lawfully acquired before the effectiveness of the Act, and where they own a majority of the stock of any telephone company they may purchase the remainder.

* Letter of instruction from the Commission to J. W. Howatt, Esq., Supervisor of Telephones. July 21, 1915.

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Application for the permission to purchase must be made in writing and sworn to by an officer of the company. The application should set forth in precise language the name and organization of the companies interested in the purchase and sale, the exchanges and territory served by said companies, the number of telephones to be affected by the purchase, the fact that the stockholders have legally consented to the sale and the reasons for the purchase. The petition should be accompanied by a blue print or map showing the lines of each of the telephone companies affected.

Upon the filing of such a complaint a public hearing should be ordered, and shall be held at the office of the Commission. Not less than ten days notice of such hearing should be given. The notice shall be served by mail upon the officers of each of the telephone companies affected. Copy of such notice should be available for newspaper reporters. Generally a hearing should be set for ten o'clock in the morning, but it will be well for you to look up train service to see if it is convenient for the parties to reach the office at that time. If a later hour is necessary it may be set, but not after three o'clock. Such a hearing may be presided over by a member or members of the Commission or any of its employees. The evidence must be taken by a stenographer, transcribed and preserved. Swear all witnesses. If the hearing at the Capitol develops the fact that the public should be heard upon the territory served by these companies, then the hearing may be continued and such notice given as will reach the public. The oath should be in the following language:

"You do solemnly swear that the testimony which you shall give at this hearing will be the truth, nothing but the truth and all of the truth, so help you God."

Where the hearing is taken by an employee he must make a report to the Commission together with his recommendations.*

* Letter of instructions from the Commission to J. W. Howatt, Esq., Supervisor of Telephones. July 21, 1915.

IN THE MATTER OF THE FILING AND CHANGE OF RATES.

*Dated July 22, 1915.***Law Interpreted as to Filing of Rates and Subsequent Changes Thereof.**

INFORMAL RULING.

You inquire if telephone companies may file tariffs on or after the first day of July which in effect change rates that were actually being charged up to and including the last day of June. This question has been considered by the Commission.

Section 5 provides that upon the taking effect of this Act it shall be the duty of every telephone company to forthwith file with the Commission a schedule of its exchange rates, tolls and charges for every kind of service. Unquestionably the telephone companies had the right to change their rates prior to the first day of July without the interference of the Commission, but such changed rates must have been issued and actually in effect before the first day of July. The requirement to file its rates with the Commission means such rates as were being charged at the time the law became effective; therefore, the telephone companies must file with the Commission the rates that were in effect up to and including the last day of June, and thereafter changes can only be made by and with the consent of the Commission. If discriminations appear in the rates so filed they can be taken care of in the way prescribed by the statute.*

IN THE MATTER OF THE WILLOW CREEK TELEPHONE COMPANY.

*Dated July 27, 1915.***Practice of Imposing Charge on Incoming Toll Messages while Making No Charge on Outgoing Toll Messages Held to be Discriminatory.**

INFORMAL RULING.

In your favor of July 16 you state that your telephone company connects with the Northwestern at Amboy; that

* Letter of instructions from the Commission to J. W. Howatt, Esq., Supervisor of Telephones. July 22, 1915.

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the toll rate from Amboy to Mankato over the Northwestern is 26 cents, which includes the 1-cent Federal tax; that subscribers to your company are given service to Mankato for 26 cents, but on service from Mankato to subscribers on your line the rate is 26 cents Mankato to Amboy plus a toll rate charged by the Willow Creek line of 10 cents, making a total of 36 cents; that the Northwestern refuses to collect this additional 10 cents, claiming the same to be discriminatory under the law.

Section 7 of the Telephone Act provides that no telephone company shall charge, demand, collect or receive from any person a greater or less compensation for any service rendered by it than it charges, demands, collects or receives from any other person for a like and contemporaneous service under similar circumstances. The Commission is of the opinion that the service given a subscriber of the Willow Creek Telephone Company to Mankato is substantially similar to the service given to a subscriber who talks from Mankato to a subscriber on your line, and, therefore, it is a discrimination under the law for you to impose a 10-cent charge on an incoming message and make no charge on an outgoing message.*

IN THE MATTER OF THE ESTABLISHMENT OF PHYSICAL CONNECTION.

Dated July 27, 1915.

Jurisdiction of Commission to Order Physical Connection Stated.

INFORMAL RULING.

Answering your verbal inquiry of this date, I beg leave to state that the Commission may upon investigation and hearing order connections to be made between any telephone exchange system and the telephone toll line or lines of

* Letter of Commission to J. W. Heritage, Secretary, Willow Creek Telephone Company, Amboy, Minnesota. July 27, 1915.

another company, or between a telephone toll line and the exchange system of another company, or between the toll lines of two companies, whenever such connection is practicable and will not result in irreparable injury to the telephone system to be so compelled to be connected. In such order the Commission shall prescribe reasonable conditions and compensation.

The determination of the compensation, terms and conditions upon which such connection should be made can only be found after a hearing. The connection permitted under this statute does not include a connection between exchanges of two different companies within the same municipality or located in different municipalities. The powers of the Commission as to physical connections are prescribed in the Act and they cannot be extended without legislative authority.*

IN THE MATTER OF THE PETITION OF THE NORTHWESTERN
TELEPHONE EXCHANGE COMPANY TO ENJOIN THE MINNE-
SOTA TELEPHONE COMPANY FROM LOCATING AN EX-
CHANGE IN BRAINERD, MINNESOTA.

Decided August 14, 1915.

**Consent of Commission Not a Condition Precedent to Construction and
Operation of Telephone Exchange in Occupied Territory by
Company Which had Received Franchise and Com-
menced Operation Prior to Effective Date of
Telephone Act.**

Petitioner sought to have the Commission enjoin the respondent from locating or operating an exchange in Brainerd until it had received the consent of the Commission. Petitioner, which was carrying on a general telephone business throughout the State and in other states, had for several years been operating a telephone exchange in Brainerd. On June 7, 1915, the respondent was granted a franchise to install and operate a telephone exchange in Brainerd, on June 26 it commenced construction of said exchange, and on June 30 had installed 22 telephones and was furnishing telephone service to the same. Since that date, the installation

* Letter of Commission to Hon. J. B. Reis, Shakopee, Minnesota. July 27, 1915.

of said exchange had continued and the underground work within the city was practically complete, and a large expense had been incurred in doing all of said work, and in all these things said telephone company had acted promptly and in good faith.

Held: That the respondent was not required to secure the consent of the Commission before it would be permitted to construct and operate its exchange at Brainerd;

That as the respondent had before the taking effect of the Telephone Act secured a franchise, it might secure an indeterminate permit upon the surrender of said franchise.

Free Service to Subscribers Until Certain Number of Subscribers Secured Unlawful.

The respondent was soliciting and installing telephone instruments in Brainerd without charge and under an agreement to make no charge until at least 300 telephone instruments were installed and in operation.

Held: That the attempt to give free service until 300 subscribers had been secured, was a direct violation of the Act.

FINDINGS AND CONCLUSIONS.

A hearing was duly held before the Commission on the thirty-first day of July upon the order to show cause which was issued upon the filing of a petition by the Northwestern Telephone Exchange Company requesting the Commission to enjoin the Minnesota Telephone Company from locating or operating an exchange within the city of Brainerd until it had received the consent of the Commission as provided by Section 13 of Chapter 152 of the Laws of 1915. The Northwestern Telephone Exchange Company was represented by *E. A. Prendergast*, attorney, and the Minnesota Telephone Company by *C. B. Randall*, attorney. Upon the petition, affidavits and arguments, the Commission finds as follows:

1. That the Northwestern Telephone Exchange Company is a corporation duly organized and existing under and by virtue of the laws of the State of Minnesota and is carrying on a general telephone business throughout said State and other states and that it now operates a telephone exchange in the city of Brainerd, Minnesota, and has owned and operated said exchange for many years last past.

2. That the Minnesota Telephone Company is a corporation organized under the laws of the State of Minnesota and is carrying on a telephone business in the vicinity of Brainerd.

3. That on the seventh day of June, A. D. 1915, the said Minnesota Telephone Company was granted by the city council of the city of Brainerd, Minnesota, a franchise authorizing it to install a telephone exchange system in said city of Brainerd and to furnish telephone service thereover; that said franchise was duly signed by the mayor and published on June 12, 1915, and that on the twenty-first day of said month the company duly filed its acceptance of said ordinance with the city clerk. That thereafter the said company had plans prepared and submitted to the proper city authorities covering the use of the streets of the city of Brainerd and the construction of its exchange; that it immediately ordered material necessary for the construction of said exchange and on the twenty-sixth day of June, A. D. 1915, commenced construction and on the thirtieth day of June, A. D. 1915, it had installed within said city 22 telephones and had commenced operation of the same; that since said date the installation of said exchange has continued and the underground work within said city is practically completed and a large expense has been incurred in doing all of said work; that in all things the said telephone company has acted promptly and in good faith.

4. That said Minnesota Telephone Company is soliciting and installing telephone instruments in said city of Brainerd without charge and under an agreement with its patrons to make no charge until at least 300 telephone instruments are so installed and in operation and that a tariff showing that fact has been filed with this Commission.

As conclusions of law, the Commission finds that said Minnesota Telephone Company is not required to secure its consent before it is permitted to construct and operate an exchange in Brainerd, Minnesota, and also that said company cannot give free service to its subscribers in the city of Brainerd.

Chapter 152 of the Laws of 1915 was approved on the sixteenth day of April and became effective July 1 of this year. Section 15 of such Act provides that:

"Any telephone company operating under any existing license, permit or franchise or which shall hereafter before the taking effect of this Act, acquire any license, permit or franchise, may, upon filing with the clerk of the municipality which granted such franchise, a written declaration that it surrenders such license, permit or franchise, receive in lieu thereof an indeterminate permit as defined in this Act; and such telephone company shall thereafter hold such permit under all the terms, conditions and limitations of this Act. Upon filing such written declaration by the telephone company, the clerk of the municipality shall file with the Commission a certificate showing that fact and the date thereof, and thereupon it shall receive an indeterminate permit from the Commission conferring the same rights as if originally granted under this Act."

Under this section the Minnesota Telephone Company has the right to surrender the franchise which it received from the city of Brainerd and secure in lieu thereof an indeterminate permit from the State. The telephone company need not secure the consent of the Commission as provided in Section 13 of the Act.

Section 11 of the Act controls the question of free service. It reads as follows:

"A telephone company may furnish service free or at reduced rates to its officers, agents or employees in furtherance of their employment, but it shall charge full schedule rates without discrimination for all other services."

The attempt to give free service until 300 subscribers have been secured is a direct violation of the Act. It appeared in the discussion that telephone companies do frequently give free service in an effort to install an exchange until a certain number of subscribers have been secured. This has been considered as a promoting expense. The statute, however, has made that practice impossible. This decision does not foreclose future consideration by the Commission of the right of telephone companies to give free or reduced service to the State, municipalities, school houses or public or quasi-public institutions.

Dated at St. Paul, Minnesota, August 14, A. D. 1915.

IN THE MATTER OF THE APPLICATION OF THE NORTHWESTERN
TELEPHONE EXCHANGE COMPANY FOR PERMISSION TO
LOWER ITS TELEPHONE RATES FOR LOCAL EXCHANGE
SERVICE WITHIN THE CITY OF BRAINERD, MINNESOTA.

Decided August 16, 1915.

Reduction of Rates to Meet Competition Authorized.

OPINION AND ORDER.

This telephone company has applied for authority to reduce rates in Brainerd from \$2.00 to \$1.75 per month on special line residence service, \$1.75 to \$1.50 on two-party line residence service, and \$1.50 to \$1.00 on four-party line residence service. The lower rates are those which are now being charged by the Minnesota Telephone Company, a competing concern. The Northwestern Telephone Exchange Company has 1,012 telephones in service in Brainerd, claims to have an investment of \$75,000, and that it is necessary in order to protect its investment and maintain its property to meet the lower rates. The Minnesota Telephone Company in an unverified statement opposes the application upon the ground that the Northwestern is without authority to operate an exchange in Brainerd; that the petition does not allege that the lower rates will produce a reasonable return upon the investment within the city of Brainerd, and that it should not be permitted to publish lower rates for the purpose of meeting competition until such time as it is required to place its rates upon an adequate basis in the cities of Mankato, Red Wing, Austin and Albert Lea.

The Northwestern Telephone Exchange Company was operating an exchange in Brainerd upon July 1, 1915, when the Telephone Act became effective. It has filed its schedule of rates as provided by law and it is doubtful if the Commission has the right to say that the telephone company was operating within that city without a franchise or other authority. At any rate, the question will not be decided upon the record now before us.

Under the Telephone Act no rates filed with the Commission shall be changed without an order of the Commission sanctioning the same, and no new rate shall take effect until the date named by the Commission, which shall not be less than ten days after it is filed.

Section 18 provides that:

"No telephone rates or charges shall be allowed or approved by the Commission under any circumstances, which are inadequate and which are intended to or naturally tend to destroy competition or produce a monopoly in telephone service in the locality affected."

The Commission is not prepared to say that the proposed rates are inadequate and that they naturally tend to destroy competition. It is a plain case of one telephone company wishing to meet the rate of its competitor, and until a thorough investigation has been made the Commission cannot say that the rates of either company are too low. No such complaint has been made and it will be doing the Northwestern Telephone Exchange Company an injustice to deny its application until such investigation has been made. There is no complaint charging that rates are inadequate in Mankato, Red Wing, Austin and Albert Lea, and that part of the protest will be disregarded.

It is, therefore, ordered, That the application be granted and that the Northwestern Telephone Exchange Company may publish the said rates and make the same effective on the first day of September, A. D. 1915.

Dated at St. Paul, Minnesota, August 16, 1915.

MISSOURI.

Public Service Commission.

JOHN A. KNOTT *et al.* v. SOUTHWESTERN TELEGRAPH AND
TELEPHONE COMPANY.

Case No. 583.

Decided July 20, 1915.

Contract Providing for Free Service to Stockholders of One Telephone Company By Another Telephone Company Held Void.

Complainants, residing within the city limits of Hannibal, sought an order requiring the defendant to furnish each of them telephone service until April 15, 1921, without payment of the regularly established rates, claiming that they were entitled to such service under certain contracts made between the Miller Township and Hannibal Telephone Company, of which they had formerly been stockholders, and the Equitable Construction Company, the defendant's predecessor.

The Miller Township and Hannibal company and the Equitable Construction Company had made a contract hereinafter referred to as "Exhibit A," under which the defendant acquired first, the franchise right of the Miller Township and Hannibal Telephone Company to do business in the city of Hannibal for twenty years from April 15, 1901; second, all poles, lines and equipment located within the said city; and third, subscription lists and contracts with 350 patrons within the city; and assumed the following obligations: first, to maintain and operate an exchange in Hannibal and carry out the 350 subscription contracts; and second, to furnish the sixty-five stockholders of the Miller Township and Hannibal Telephone Company connection with and use of the exchange, without charge, and for all 'phones in excess of sixty-five the Miller Township company was to pay 20 cents per month per 'phone.

Complainants who were of the sixty-five stockholders mentioned in the contract claim that said contract "Exhibit A" constituted a contract for the benefit of said sixty-five stockholders of the Miller Township company, including themselves, that said contract was fully executed and that hence neither of the parties who signed nor their successors could do anything to abrogate it without the consent of those for whose benefit it was made; that since the Equitable Construction Company and its successors had performed the contract the defendant was estopped from claiming that the contract was not valid and binding when made, or that a sub-

sequent contract between the Bell Telephone Company of Missouri (a successor of the Equitable Construction Company and a predecessor of the defendant), and the Miller Township company, dated July 1, 1912, abrogated the first contract.

Complainants further contended that as the contract was recognized as valid when made and the rendition of service and acceptance thereof followed, any law subsequently enacted tending to render such contract void or inoperative could not be applied since such application would impair the obligation of said contract.

Defendants contended that the original contract "Exhibit A," is void because against public policy in that it provides for unjust discrimination, and that said contract is not now binding on the defendant in so far as it requires the furnishing of free service to the complainants and that if said contract ever was valid and gave the right of free service to the complainants it was legally abrogated by the contract of July 1, 1912, and also by the Public Service Commission Law forbidding unjust discrimination touching telephone rates.

Held: That the Miller company owed its subscribers and stockholders the duty to provide telephone service, and it was competent for it to enter into a contract, in harmony with the then existing law and sound public policy, for the benefit of said stockholders and subscribers, which contract said stockholders and subscribers might enforce;

That the contract "Exhibit A" was void because unjustly discriminatory under the well settled rules of law in effect at the date when the contract was made as well as under the Missouri statute forbidding unreasonable discrimination, and hence was unenforceable by these complainants against the defendant;

That the division into stockholders and nonstockholders was not a reasonable classification and the various subdivisions within the general class of stockholders were entirely arbitrary;

That the fact that the service was given without charge by the defendant and its predecessors to complainants afforded no ground whatever for the application of the doctrine of estoppel against the defendant or precluded said defendant from claiming that the contract was and is void and unenforceable by the complainants; that as "Exhibit A" was absolutely void because repugnant to law and inimical to the public interest no power whether called estoppel or any other name could "breathe life into such a dead thing;"

That as the contract "Exhibit A" never had any legal basis upon which to rest, the question whether by subsequent instruments this contract was abrogated is immaterial. That the provision of the Public Service Commission Law to the effect that nothing in said law shall be construed to prevent any telephone corporation from continuing to furnish the use of its lines, equipment or service under any contract or contracts in force at the date the law became effective, etc., was intended to apply only to con-

tracts which were valid and enforceable under the law as it existed at the time of their execution;

That as "Exhibit A" was a contract inimical to public interest and against sound public policy this provision of the Public Service Commission Law cannot be invoked by the complainants in order to obtain free service;

That the Missouri statute forbidding discrimination, preference and all other forms of inequality in rates for telephone service does not impair the obligation of the contract "Exhibit A" since said instrument never was a valid contract capable of enforcement;

That even assuming "Exhibit A" to have been enforceable when made, the constitutional provision against the impairment of the obligation of contracts is not applicable to contracts of the nature of "Exhibit A" for the law is firmly established that Congress or a state legislature, within their respective jurisdictions, has power to regulate common carriers and other public service companies and that such power is not destroyed or limited because the regulation may to some extent affect the power to contract or even affect existing valid contracts, for when contracts are made by or with public service companies the parties are presumed to have had in mind the possibility of such contracts being affected by the subsequent exercise by the government of its powers to regulate public utilities.

OPINION.

I.

STATEMENT OF CASE AND ISSUES OUTLINED.

The three complainants, John A. Knott, E. E. Hixson and Joseph O'Hearn, ask that the defendant be ordered by this Commission to furnish each of them telephone service to a named date, April 15, 1921, without payment of the regular established rates, because of the existence of conditions arising by virtue of certain contracts and transactions alleged to have been superinduced pursuant thereto (hereinafter specified and which contracts and transactions are admitted), as follows:

On May 14, 1902, the Miller Township and Hannibal Telephone Company, a corporation of Missouri, and the Equitable Construction Company, a corporation of Illinois, entered into an agreement ("Exhibit A") by which the former corporation agreed to transfer and assign to the latter corporation (1) all the franchises and rights acquired and held by the first corporation under an ordinance of Hannibal, approved April 15, 1901, which granted to the

first corporation certain franchises to build and operate in Hannibal a telephone exchange for a period of twenty years; (2) all of its lines, poles and other line equipments at that date constructed and existing in Hannibal, and (3) all of its subscription lists of 350 patrons which had been taken by it for its contemplated telephone exchange. The contract recites that said subscribers were in Hannibal, and that "such assignment shall transfer all rights and equities against said subscribers, but subject to all liabilities and rights in their favor, which said second party (Equitable Construction Company) hereby assumes and agrees to carry out and fulfill."

The contract also recites "that said first party (Miller Township and Hannibal Telephone Company) will secure from the city of Hannibal proper amendments to said franchise ordinance extending the period of time covered thereby, raising the maximum charges authorized thereby for telephone service to \$2.50 per month instead of \$2.00 per month, and the privilege of putting in an underground system for such part of said exchange as said second party may elect."

The contract further provided "that said second party or its assigns will, at the corporate limits of said city, connect sufficient lines to its central office with the lines of said first party in such manner as to afford, and thereafter *during said franchise period will afford, to all telephones, not exceeding sixty-five, on said first party's lines, the full and free use and benefit of said city exchange.* All telephones on lines of said first party in excess of sixty-five shall have the like connection and full service, but at a charge of 20 cents per month each to be paid said second party. *Persons now having 'phone connection with said first party's lines within the city of Hannibal, not, however, exceeding four in number, shall have the continued right of such connection in such manner as will afford them free of charge the same privileges and service as is above secured to others on said first party's lines, said last named four to be included in said first named sixty-five.*"

The contract further provided that there should be no assignment of the franchise by said second corporation or its assigns "without adequate provisions for fully carrying out by all assigns all the foregoing agreements by said second party."

On June 21, 1911, an agreement ("Exhibit B") was entered into between the Miller Township and Hannibal Telephone Company, a Missouri corporation, as first party, and the Bluff City Telephone Company, as second party, a Missouri corporation, by which both parties recognized, except as modified, the contract as above set out as binding upon each of them.

The second clause of said contract recites:

"It is agreed that second party has and will at the corporate limits of the city of Hannibal connect sufficient lines to its central office with all the lines of the first party in such manner as to afford and thereafter to afford to all telephones not exceeding sixty-five in number, on said first party's lines, the full and free use and benefit of the city exchange maintained by second party. All telephones on the lines of said first party in excess of the aforesaid sixty-five, shall have the like connection, and full service, but at a charge of 20 cents per month for each 'phone to be paid said second party. Persons now having 'phone connections with said first party's lines within the said city of Hannibal, not, however, exceeding four in number, shall have the continued right of such connections in such manner as will afford them free of charge the same privilege and service as is above secured to others on said first party's lines, said last named four to be included in said first named sixty-five, but it is expressly agreed that the use of all 'phones on all lines of said first party shall be personal to the parties having such 'phones or members of their families; all use thereof by others shall be charged for at regular toll rates."

It is admitted that the four persons mentioned in the contracts ("Exhibits A and B") were the three complainants herein and F. W. O'Brien, now deceased.

On July 1, 1912, the Bell Telephone Company of Missouri, party of the first part, entered into a contract ("Exhibit C") with the Miller Township and Hannibal Telephone Company, party of the second part, which contains among others the following provisions:

" Clause 2. It is understood and agreed that the party of the first part will meet the lines of the party of the second part at the city limits of Hannibal, Missouri, and switch the present number of subscribers of the second party at Hannibal, Missouri, for \$31.50 per month; it being further agreed and understood that for any additional subscriber added by the second party taking the Hannibal, Missouri, service from and after date hereof, the party of the second part agrees to pay first party the sum of 35 cents per month per subscriber, and for reduction in present number of such subscribers by the second party they shall pay 35 cents per month less to the first party."

* * * * *

" Clause 8. The date on which this contract takes effect all sub-license contracts and traffic agreements entered into between the parties hereto and all amendments and supplemental contracts thereto for the territory covered by this contract shall be and become null and void."

The " territory " mentioned in Clause 8, is that covered by contracts " Exhibits A and B " above.

When the contract, " Exhibit A," was entered into the Miller Township and Hannibal Telephone Company had lines and poles in Miller township and lines running into Hannibal with poles, and were furnishing service to the four persons named. The four persons named were subscribers to the stock of said company, each having paid \$40.00, and they claim, in return for their investment they were furnished the above telephone service without further charge.

The switchboard of the Miller Township and Hannibal Telephone Company was located from the time of its organization to the time of the execution of contract " Exhibit A " on the first floor of the Journal Building, in Hannibal, which was the office of John A. Knott, one of the complainants herein. The complainants accepted the terms of contract " Exhibit A " and obtained the service, without charge, and continued to receive such service uninterruptedly to the present time; and this is also true of the balance of the sixty-five subscribers mentioned in that contract. The present defendant is the successor of the corporations contracting with the Miller Township and Hannibal Telephone Company, mentioned above.

On September 7, 1914, defendant notified the complainants that after October 1, 1914, the free service would cease and they would be required after that date to pay the usual charge. On the filing of an informal complaint, upon request of this Commission, dated September, 1914, complainants continued to receive telephone service as theretofore, without charge, and are now obtaining same.

After the execution of contract "Exhibit A" the poles and lines of the Miller Township and Hannibal Telephone Company in Hannibal were removed and thereafter service was furnished to complainants over the Hannibal lines of the Equitable Construction Company, and its successors, and at present over the Hannibal lines of the defendant from its central office in Hannibal.

The Miller Township and Hannibal Telephone Company is now operating, and has operated since 1902, the telephone exchange outside of Hannibal and has connection with the defendant's exchange at the city limits, and defendant is furnishing telephone service to the subscribers and renters of the Miller Township and Hannibal Telephone Company. However, defendant claims that this is solely by virtue of the contract, "Exhibit C" above mentioned, and not in accordance with the terms of prior contracts, "Exhibits A and B."

The Miller company has at present 101 renters, or 101 users of the 'phone, in excess of the 65 mentioned in the contract; that is, in all 166 stations, and is paying on 101, that is, \$35.35 a month. This payment is made by virtue of Clause 2 of contract "Exhibit C" above, which is fully considered herein.

It thus appears that under the contract ("Exhibit A") the defendant, through its grantors, acquired, first, the franchise right of the Miller Township and Hannibal Telephone Company to do business in the city of Hannibal for twenty years from April 15, 1901; second, all poles, lines and equipments located within said city; and third, subscription lists and contracts with 350 patrons within the city.

And under the contract defendant assumed these obligations, first, to maintain and operate an exchange in Hannibal and carry out the 350 subscription contracts; and, second, to furnish the sixty-five stockholders of the Miller Township and Hannibal Telephone Company connection with and use of the exchange, the complainants being of that number, without charge, and for all 'phones in excess of sixty-five the Mutual company was to pay 20 cents per month for each 'phone.

The case was heard before one of the Commissioners at Hannibal, May 13, 1915, at which time all the testimony was taken, and oral arguments were made by learned counsel for the respective parties, and which appear in full in the record. Subsequently, able written briefs and arguments were presented by either side.

POSITIONS OF RESPECTIVE PARTIES.

The position of the complainants is that the contract "Exhibit A" constituted a contract for the benefit of the sixty-five stockholders, including the three complainants, of the Miller Township and Hannibal Telephone Company, and that service to these sixty-five persons was rendered and received by them; that such contract was fully executed, and hence neither the parties who signed, nor their successors or assigns, could do anything to abrogate it without consent of those for whose benefit it was made; that since the Equitable Construction Company and its successors have performed the contract, that is, supplied the service, the defendant is now estopped from claiming that the contract was not valid and binding when made, and hence Clause 8 of the contract, "Exhibit C," cannot and does not abrogate the first contract, "Exhibit A."

(It appears that the defendant did not construe Clause 8 of the contract, "Exhibit C," as relieving it of the obligation to furnish the service to the three complainants free; that is, from July 1, 1912, the date of the contract, until September 7, 1914, the date defendant gave notice that the complainants would be required after October 1 to pay the

usual charge, because such service was furnished free as theretofore.)

Moreover, complainants contend that as the contract was recognized as valid when made and the rendition of service and acceptance thereof followed, any law subsequently enacted tending to render such contract void or inoperative cannot be applied to such contract, since such application would impair its obligation. In other phrase, the rights acquired by complainants under the contract, "Exhibit A," are absolute and irrevocable during the life of the contract, which was to run until April 15, 1921, and could not thereafter be destroyed or impaired, except by the complainants themselves, not even by the Miller Township and Hannibal Telephone Company, nor by the Equitable Construction Company, or its successors or assigns; nor had the legislature power to abrogate any contract relating to service and rates, whether discriminatory or not, because such action would constitute an impairment of the obligation of the contract, within the meaning of the federal and state constitutions.

On the other hand, defendant's position is, first, that the original contract, "Exhibit A," is void because against public policy, in that it provides for unjust discrimination, and is not now binding on defendant in so far as it requires the furnishing of free service to complainants; and, second, if it ever was valid and gave the right of free service to complainants, it was legally abrogated by the contract, "Exhibit C," and also by the Public Service Commission Law forbidding unjust discrimination touching telephone rates.

II.

VALIDITY AND ENFORCEABILITY BY COMPLAINANTS OF CONTRACT "EXHIBIT A."

1. *Nature of Contract as it Relates to Complainants.*

It appears that the learned counsel of complainants fail to distinguish between the Miller company, a corporation.

and the stockholders thereof. It is elementary that in legal conception a corporation is an entity or artificial personality separate and distinct from its members or stockholders. The franchise rights and physical property in Hannibal and subscription lists of prospective Hannibal patrons sought to be transferred belonged not to the stockholders as such, or to them as individuals, but to the legal entity known as the Miller Township and Hannibal Telephone Company. The sum of \$40.00 which each of the complainants paid to the corporation as subscribers belonged, after it was paid, not to them, but to the corporation. The complainants were stockholders to the extent of \$40.00 each, and as such stockholders were entitled to receive service from the company, and as they claim free of charge, unless the corporation should not collect enough to defray its operating expenses, and in such case each would be required to pay his pro rata share of such deficit. According to the evidence no additional sum has ever been paid to the company by any of the stockholders and subscribers.

The claim is made that the contract was executed not for the benefit of the Miller company, but for the benefit of its then sixty-five stockholders and subscribers, and, therefore, that they may enforce it against the defendant and compel the furnishing of the free service until April 15, 1921, the date of the expiration of the Miller company's Hannibal franchise.

That a contract between two parties upon a valid consideration may be enforced by a third party, when entered into for his benefit, is well settled law in this State. This is so, though such third party is not named in the contract, and though he is not privy to the consideration. *Rogers v. Gosnell*, 58 Mo. 590, *State ex rel. v. Gaslight Company*, 102 Mo. 472; *Ellis v. Harrison*, 104 Mo. 276, and cases cited. It is sufficient in order to create the necessary privity that the promisee owe to the party to be benefited some obligation or duty, legal or equitable, which would give him a just claim. *St. Louis v. Von Phul*, 133 Mo. 561, 565; *Board, etc., St. Louis Public Schools v. Woods*, 77 Mo. 196; *St. Louis v.*

Lumber Company, 114 Mo. 74; *Snider v. Express Company*, 77 Mo. 523; *Ellis v. Harrison*, 104 Mo. 276; *State ex rel. v. Gas Company*, 102 Mo. 472; *Schuster v. Railroad*, 60 Mo. 290; *St. Louis v. Keane*, 27 Mo. App. 642; *Casey v. Gunn*, 29 Mo. App. 14; *Klein v. School District*, 42 Mo. App. 462; *St. Louis v. Lumber Company*, 42 Mo. App. 586; *Hatch v. Hanson*, 46 Mo. App. 323; *Luthy v. Woods*, 6 Mo. App. 70.

Thus the obligation of bonds given by contractors for public work may be of a dual nature, first, to protect the public, and second, to protect material men who furnish material and laborers who furnish labor for such work. In such case, although the latter are not parties to the contract, the bond may protect them. They may sue on such bond, since in the view of the law the public owes some duty, legal or equitable, or some moral obligation to them. *Kansas City ex rel. v. National Surety Company*, 196 Mo. 281, 301 to 305; *Devers v. Howard*, 144 Mo. 671, 680; *St. Louis v. Von Phul*, 133 Mo. 561.

The Miller company owed to its stockholders and subscribers the duty to provide telephone service, and having ample power to contract (sections 3329, 3338 R. S. Mo. 1909) it was competent therefore for it to enter into a contract, in harmony with the then existing law and sound public policy, for their benefit which could be enforced by them.

2. *Is the Contract Against Public Policy Because Discriminatory?*

The law has always recognized a distinction between public and private service respecting charges. Partiality or an unjust or unreasonable charge is permissible in the latter, but not in the former. The statement, one is a public service company, *ex vi termini* imports a duty to the public, and a corresponding legal right in the public; a right common at all. *St. Louis, A. & T. H. R. R. Co. v. Hill*, 14 Ill. App. 579, 581.

There are many expressions in earlier judicial decisions condemning unjust discrimination on the part of public

service companies, as against sound public policy. Some of them go to the extent of asserting that independent of statutory provision unjust discriminations respecting rates and charges are in violation of public duty. *Cook v. Chicago, Rock Island and Pacific Railway Company*, 81 Iowa 551, 46 N. W. 1080, 25 Am. St. Rep. 512, 9 L. R. A. 764; *Atchison, Topeka and Santa Fe Railroad Company v. Denver & New Orleans Railroad Company*, 110 U. S. 667, 674; *Tift v. Southern Railway Company*, 123 Fed. 789; Annotation to *Louisville, Evansville and St. Louis Consolidated Railroad Company v. Wilson*, (Ind.) 18 L. R. A. 105; *Hutchinson on Carriers*, Section 243. Some declare that the common law requires that the charges must be equal to all for the same service under like circumstances. *St. Louis, A. & T. H. R. R Co. v. Hill*, 14 Ill. App. 579, 585.

A telephone company "must be equal in its dealings with all." *State ex rel. v. Bell Telephone Company*, 23 Fed. 539, 541. A leading text writer declares that "the duty owed to all alike involves obligations to treat all alike," and that "The common law today forbids all discrimination between two applicants who ask the same service." 2 *Wyman Public Service Corporations*, Sections 1290, 1292.

As aptly put in a leading case: "The law will not and cannot tolerate discrimination in the charges of these quasi-public corporations. There must be equality of rights to all and special privileges to none." *Griffin v. Goldsboro Water Company*, 122 N. C. 206, 30 S. E. 319, 41 L. R. A. 240.

"A person having a public duty to discharge is undoubtedly bound to exercise such office for the equal benefit of all." *Messenger v. Pennsylvania Railroad Company*, 36 N. J. L. 407, 13 Am. Rep. 457, 37 N. J. L. 531, 18 Am. Rep. 754.

The numerous cases on this subject all tend to establish the same general principle that those engaged in serving the public cannot make unreasonable and unjust discriminations between their patrons. "The common law upon the subject is founded on public policy, which requires one en-

gaged in a public calling to charge a reasonable and uniform price to all persons for the same service rendered under the same circumstances." *New York Telephone Company v. Siegel-Cooper Company*, 202 N. Y. 502, 96 N. E. 109, 36 L. R. A. (N. S.) 560, 564; *Killmer v. New York Central & Hudson River Railroad Company*, 100 N. Y. 395, 3 N. E. 293, 53 Am. Rep. 194; *Lough v. Outerbridge*, 143 N. Y. 271, 38 N. E. 292, 42 Am. St. Rep. 712, 25 L. R. A. 674.

As a telephone company is a common carrier of news and intelligence, it is impressed with the obligation of furnishing its service to each patron at the same price it makes to every other patron for the same or substantially the same or similar service. *Nebraska Telephone Company v. State*, 55 Neb. 627, 76 N. W. 171, 45 L. R. A. 113.

The Missouri Supreme Court has declared that "a public telephone company is a public service corporation, and as such must treat the members of the general public alike." *Home Telephone Company v. Sarcoxie Telephone Company*, 236 Mo. 114, 129.

In accordance with the doctrine of the common law designed to promote sound public policy, and aside from statutory exactment, the acceptance by the Equitable Construction Company of its franchise to furnish telephone service to the public carried with it the duty of supplying all its patrons without unjust discrimination. Likewise, the Miller Township and Hannibal Telephone Company was under the same legal obligation. All patrons of the same class of both companies were entitled to the same service on equal terms. *Moreland Rural Telephone Company v. Mouch*, 48 Ind. App. 521, 96 N. E. 193.

Since the passage of the Missouri law forbidding inequality of service and charges on the part of public utility companies this Commission has frequently condemned unjust discrimination in whatever form practiced. *Berry v. Caruthersville Ice and Light Company*, 2 Mo. P. S. C. 12; *Mexico v. Mexico Power Company*, 2 Mo. P. S. C. 177, 187; *Weaver v. Kirksville Light, Power and Ice Company*, 2 Mo. P. S. C. 225. Service to patrons of the same class must be

measured by the same rate. *Re Joplin Water Works Company*, 2 Mo. P. S. C. 235; *Meek v. Consumers Electric Light and Power Company*,* 2 Mo. P. S. C. 122, 144. No unjust discrimination of any character will be countenanced, e. g., a method of discount which may result in inequality of charges. *Commercial Club of Charleston v. Missouri Public Utilities Company*, 2 Mo. P. S. C. 311, 353, 354. This Commission has ruled that it is unjust discrimination, and hence in violation of Section 87, par. 2 of the Public Service Commission Law, for a mutual telephone company to exact a different charge from its stockholders than it does from non-stockholders for the same service. *Crane Telephone Company v. Barry County Mutual Telephone Company*,† 1 Mo. P. S. C. 127.

This Commission has also ruled that the furnishing of electricity free to the stockholders of an electric company, or to any other consumer, constitutes unjust discrimination. *Meek v. Consumers Electric Light and Power Company*,* 2 Mo. P. S. C. 122, 144; Section 68 P. S. C. L. A special rate to stockholders is unlawful. "Stockholders should benefit only in the way of dividends and a lower rate to stockholders is unjustly discriminatory." *Weaver v. Kirksville Light, Power and Ice Company*, 1 Mo. P. S. C. 564, 586. Furnishing service at a lower rate to physicians under municipal ordinances is unjust discrimination. *Butler v. Doniphan Telephone Company*,‡ 2 Mo. P. S. C. 81, 82. The supplying of free telephone service to the municipal authorities and the local public schools in consideration of the use of the streets and alleys is discrimination, where not so provided in the franchise. *Simms v. Columbia Telephone Company*,§ 2 Mo. P. S. C. 256, 286.

In view of the wise principles announced in the foregoing decisions, and the established law on this subject as stated elsewhere by the writer, (*McQuillin Municipal Corpora-*

*See Commission Leaflet No. 40, p. 1107.

†See Commission Leaflet No. 25, p. 811.

‡ See Commission Leaflet No. 38, p. 668.

§ See Commission Leaflet No. 42, p. 96.

tions 4, Section 1697 and numerous cases in notes), our conclusion is that the contract "Exhibit A" in unquestionably void because unjustly discriminatory, under the well settled rule of the common law at the date the contract was made, as well as under the Missouri statute forbidding unreasonable discriminations, which is merely an affirmation of the common law rule (*Cumberland Telephone and Telegraph Company v. Kelly*, 160 Fed. 316, 87 C. C. A. 268) unless it should distinctly appear that the classification therein is just and fair.

3. Reasonableness of Classifications—Stockholders and Renters as Classes.

Complainants contend that the sixty-five subscribers, including the complainants, should not be regarded as a favored class within the meaning of unreasonable or unjust discrimination as used in the law. The claim is made that the free service applied to all of a class, namely, the sixty-five subscribers, at the time of making the contract "Exhibit A," and that it operated equally upon all within this class, although sixty-one were located beyond the limits of Hannibal, and four, including the three complainants, were residents of Hannibal. But under that contract, and also "Exhibit B," users of telephones on the lines of the Miller company in excess of sixty-five were charged at the rate of 20 cents per month. These constituted a distinct class. Presumably they were not stockholders.

From the evidence it appears that at present the Miller company has 166 subscribers and 166 stations, that is, 101 users of the 'phone in excess of the sixty-five mentioned in the contracts "Exhibits A and B." It appears from Clause 2 of the contract "Exhibit C" and the evidence that the users of the Miller company 'phones at present are divided into two classes, namely, the original 65, and the 101 who became users thereafter. Under this clause the Miller company pays to the defendant the sum of \$31.50 for service to the subscribers as they existed at the date of the contract, July 1, 1912, and these, it seems, were

the original 65, less the four who resided in Hannibal when the contract "Exhibit A" was entered into, thus reducing them to 61, all of whom reside beyond the corporate limits of Hannibal; and 35 cents per month for each subscriber in excess of 65, and 35 cents per month less for each subscriber less than 65. From the evidence it is shown that at present the Miller company is paying for each subscriber the sum of 35 cents to the defendant, or \$35.35 in the aggregate based upon 101 renters in excess of the original 65. This would leave the difference between 166 and 101, making 65 subscribers from whom nothing is received by defendant, and therefore the inference is irresistible that the 101 subscribers pay this sum, and the original 61 (deducting the four residing in Hannibal when the contract "Exhibits A and B," was made) receive their service free.

Accordingly, it appears that the original contract "Exhibit A" and also "Exhibit B" put all of the stockholders and subscribers of the Miller company into one class and the renters into another class, and the contract "Exhibit C" divides this class into distinct classes, namely, the 65 who receive free service and the 101 who pay 35 cents per month each. And in the later contract the three complainants were passed *sub silentio* without as much as a nod of recognition, thus placing them in a class by themselves. Finally, the members of the original class, composed of the stockholders and subscribers and the renters of the Miller company, find themselves segregated into three separate and distinct classes, without substantial basis or even a plausible reason for this arbitrary classification.

The service which the complainants are now receiving at Hannibal exchange is sold to the public at the present price:

Business station, \$36.00 per year — for 13 years, \$468.

Residence station, \$24.00 per year — for 13 years, \$312.

The service which they received during the greater part of the past thirteen years was on sale to the public at:

Business station, \$30.00 per year — for 13 years, \$390.

Residence station, \$18.00 per year — for 13 years, \$234.

In the original complaint filed in this case it is stated that defendant concedes that under its interpretation of the contract complainants are now entitled to the service of the Hannibal exchange on the same terms and at the same rates, furnished under that contract to the other stockholders of the Hannibal and Miller Township company. That is to say, that these complainants might extend lines from their residences in Hannibal to the rural lines where it enters the city from Miller Township, and receive the service under the contract. This also is the substance of the evidence of Mr. Knott, one of the complainants, on this point in speaking of a conversation he had with defendant's Hannibal manager. Should the complainants so extend lines for this service, they would be receiving the service now selling in Hannibal according to rate schedule on file with the Commission at \$4.20 per year, which is the rate offered rural subscribers furnishing their equipment up to the city limits, and the rate paid by the Miller company for the 101 renters to defendant under the contract "Exhibit C."

The three complainants reside in Hannibal and receive the same telephone service as other urban resident patrons; the latter pay, but the complainants insist that they should receive it free. The defendant charges \$3.00 per month for business' 'phones, \$2.00 for residence 'phones, and \$1.50 for party lines, as it appears from a schedule on file with this Commission, of which we will take judicial notice. It is also true that the original 61 suburban subscribers of the Miller company receive free service, as pointed out above, however under different circumstances. They live in the country—in the suburbs of Hannibal—and the complainants reside within the city limits. Doubtless, complainants believe that if these 61 persons receive free service, they also should be favored in like manner, since they all belonged originally essentially to the same class and still occupy the same relation, though residing in different localities and receiving service from different centers.

It is competent for the defendant to furnish service to 65, or any reasonable number of users of 'phones connected with the lines of the Miller company residing in the Hannibal suburbs for a specified sum, as here \$31.50, and in addition a designated rate for each user in excess of that number, as here 35 cents per month, or to allow a deduction from the aggregate sum, as here 35 cents per month, for each 'phone less than the 65, or the reasonable number agreed upon. Clause 2 of the contract, "Exhibit C," so read, but according to the evidence it appears that it was not intended by the parties to the contract that any one of the 65 should pay anything for service, and that the amount to be paid by the Miller company to the defendant should be collected from the users who became users after the execution of the contract "Exhibit A." Precisely in this manner does the contract operate. The original 61 suburban subscribers and four more (but who they are does not appear) receive free service. It is certain that the three complainants are not of the favored class.

In view of this analysis and the real operation of the contract, the conclusion is unavoidable that the contract is a mere device thinly disguised, calculated to mislead and evade the just purpose of the law forbidding discrimination and favoritism and requiring uniformity of charges for the same service under like or similar conditions.

True, all discriminations are not forbidden, but only unjust discriminations. *Western Union Telegraph Company v. Call Publishing Company*, 181 U. S. 92, 21 Sup. Ct. 561, 45 L. Ed. 765; *Western Union Telegraph Company v. Call Publishing Company*, 44 Neb. 326, 62 N. W. 506. For example, it is not an unjust discrimination to make to one patron a less rate than to another where there exists differences in conditions affecting the expense or difficulty of performing the service which fairly justifies a different rate. *Williams v. Maysville Telephone Company*, 119 Ky. 33, 82 S. W. 995; *St. Louis Brewing Association v. St. Louis*, 140 Mo. 419, 37 S. W. 525, 41 S. W. 911. The general rule is that where the conditions and circumstances

under which the service is rendered are essentially different, varying rates are justified. *United States v. Chicago and Northwestern Railway Company*, 62 C. C. A. 465; *Chicago, New Orleans and Texas Pacific Railway Company v. Interstate Commerce Commission*, 162 U. S. 184, 16 Sup. Ct. 700, 40 L. Ed. 935; *Interstate Commerce Commission v. Baltimore and Ohio Railroad*, 145 U. S. 263, 12 Sup. Ct. 844, 36 L. Ed. 699; *East Tennessee Telephone Company v. Harrodsburg*, (Ky.) 122 S. W. 126.

So there is not necessarily an unjust discrimination because different rates are charged in different parts of the municipality, and a higher rate may be charged for water furnished to summer cottages in an outlying district than is charged in the center of the city. *Souther v. Gloucester*, 187 Mass. 552, 73 N. E. 558, 69 L. R. A. 309. So the fact that a telephone company, under no duty to extend its lines outside of the municipal limits, deems it proper to make such extension to one or two persons, does not make its refusal to furnish service to another person outside the limits an unlawful discrimination. *Younts v. Southwestern Telegraph and Telephone Company*, 192 Fed. 199, 207.

Other illustrations may be given. A lower rate to telephone patrons furnishing their own equipment is a reasonable classification, *e. g.*, an allowance of 50 cents per month to any patron who owns his own telephone receiver, transmitter and coil, and "keeps up his line to the main line" of the telephone company, and "builds his line" to the main line. *Butler v. Doniphan Telephone Company*,* 2 Mo. P. S. C. 81, 82.

Under the Public Service Commission Law messages by telephone may be classified into day, night, repeated and unrepeatd, commercial, press, government and such other classes as are just and reasonable and different rates may be charged for the different classes of messages. Section 87, Par. 3.

*See Commission Leaflet No. 38, p. 668.

In the absence of statutory authorization different rates may be charged for day and night messages, since the difference in the cost of service affords a sufficient basis for classification. *Western Union Telegraph Co. v. Call Publishing Company*, 44 Neb. 326, 62 N. W. 506, 48 Am. St. Rep. 729, 27 L. R. A. 622, Second Appeal, 58 Neb. 192, 78 N. W. 519, affirmed in 181 U. S. 92, 21 Sup. Ct. 561, 45 L. Ed. 765. But exacting a higher rate from new subscribers than from old subscribers for the same service is unreasonable classification, and hence unlawful discrimination. *Bradford v. Citizens Telephone Company*, 161 Mich. 385, 126 N. W. 444, 137 Am. St. Rep. 513.

There may be a classification of business and residence 'phones; however, the fact that a patron uses his residence 'phone in his business is not sufficient to warrant applying the rate for business 'phones to him, in the absence of a showing that his use thereof is substantially different from that of other residence 'phones. *Moreland Rural Telephone Company v. Mouch*, 48 Ind. App. 521, 96 N. E. 193.

So a telephone company may not charge a telegraph company more for service than it exacts of other business concerns, simply because the telegraph company derives a larger pecuniary benefit from such service than do other patrons. This constitutes no reasonable basis for classification, and hence is unjust discrimination. *Postal Telegraph-Cable Company v. Cumberland Telephone and Telegraph Company*, 177 Fed. 726.

Discriminations in the interest of the public and which benefit the people generally are favored. Perhaps no rule can be formulated with sufficient flexibility to apply to every case that may arise. In one case it was said that "it is only when the discrimination inures to the undue advantage of one man, in consequence of some injustice inflicted on another, that the law intervenes for the protection of the latter." *Hays v. Pennsylvania Company*, (C. C.) 12 Fed. 309, 311; *United States v. Chicago and Northwestern*

*See Commission Leaflet No. 43, p. 334.

Railway Company, 62 C. C. A. 465, 470, 127 Fed. 785, 790. Thus the furnishing of gas to a city at a cheaper rate than to general customers is not an unreasonable discrimination, since this is in the interest of the public, *Willcox v. Consolidated Gas Company*, 212 U. S. 19, 29 Sup. Ct. 192, 53 L. Ed. 382, 15 A. & E. Ann. Cases, 1034.

Discriminations in favor of the public at large are not opposed to public policy, because they benefit the people generally by relieving them of part of the burdens, and such discrimination cannot be held illegal in the absence of legislation upon the subject. *McQuillan Municipal Corporations*, 4, Section 1697, p. 3594. Thus the furnishing telephone service free to municipal buildings does not constitute an unjust discrimination. *Superior v. Douglass County Telephone Company*, 141 Wis. 363, 122 N. W. 1023; *Re Abingdon Home Telephone Co.* (Illinois P. U. C.), P. U. R. 1915 C., 345.

The case of *New York Telephone Company v. Siegel-Cooper Co.*, 202 N. Y. 502, 96 N. E. 109, 36 L. R. A. (N. S.) 560, cited by the learned counsel of complainants to sustain the contention of reasonable classification, announces principles at variance with their position. In that case it was held that a telephone company, with an exclusive right to use the streets of the city of New York in order to carry on its business, may make a discount of 25 per cent. from its usual charges for telephone service, in favor of the city itself, regularly incorporated charitable institutions, and regularly ordained clergymen, without entitling all its other patrons to a like discount for service of the same kind.

The discount was based solely upon the character and description of the patrons using the service, first, to the city, along whose streets the company's wires are stretched, and which has large powers of control and regulation over its property, as a contribution to the expense and cost of government; second, to the charitable institutions and clergymen, as an exercise of charity and benevolence on the part of the company to worthy and deserving patrons for services rendered of special benefit to the community

as a whole, in accordance with a custom of long standing, under which they have received gratuitous contributions from members of the general public.

The decision rests on the principles of the common law, as the contract involved was made prior to the enactment of the New York statute relating to the subject. The case was presented on an agreed statement of facts. It was not stated as a fact that the discrimination was unreasonable or unjust, but it was insisted that as the company was engaged in a public calling, it was subject to a rigid rule requiring it to charge all patrons receiving the same service at the same rate, with no right of discrimination on account of the character of its customers, as distinguished from the character of its service. The sole question presented for decision was unlawful discrimination.

The principle of the decision appears from the following language of the court:

"Whether discrimination is unreasonable or not is usually a question of fact; but the parties in this case have made no stipulation on that subject in their statement of the facts, and we cannot find a fact, even if we think that the facts as agreed upon would permit the inference. The defense, therefore, must fail, regardless of any other consideration, unless we hold that one or more of the discriminations in question was unreasonable as a matter of law.

"No discrimination was made by the plaintiff in favor of any class of customers, except the three expressly named; and for time out of mind discounts have been allowed by common carriers and others conducting a business in which the public has an interest, for services rendered to clergymen and institutions of charity, because they are engaged in the work of benefiting mankind, and are supported by contributions from the public. For these reasons, their property is exempt from taxation wholly or in part. They carry on no business, do not compete with others, and are not engaged in making money. It is the general belief that they render full value for what they receive by caring for the sick and wounded or helping all to lead orderly lives. * * *

"Moreover, the law against unreasonable discriminations rests on public policy. It is forbidden because it is opposed to the interest of the public, which requires that all should be treated alike under like circumstances. Discriminations, however, in favor of the public, are not opposed to public policy, because they benefit the people generally by relieving them of part of their burdens. In the absence of legislation upon the subject,

such discriminations cannot be held illegal, as matter of law, without overturning the foundations upon which the rule itself is built. * * *

"We think that according to the common law, as in force prior to recent legislation on the subject, the discriminations in question were neither unreasonable nor unjust as matter of law, because they were in favor of the public, and because the favored classes were in a different situation and were surrounded by different circumstances from those affecting the general patrons of the plaintiff."

Since it distinctly appears from this consideration that the classification attempted is not based on sound reason, it follows, as the night the day, that contract "Exhibit A" in so far as it sought to furnish free service to the sixty-five stockholders was and is void, and hence, is unenforceable by the three complainants against the defendant

4. *Estoppel*:

The fact that the service was given without charge by defendant and its predecessors to complainants affords no ground whatever for the application of the doctrine of estoppel against defendant, and thus precluding it from claiming that the contract was and is void and unenforceable by complainants. Estoppel may be invoked only to prevent injustice, and not merely to stop the mouth from pleading and uttering the truth. *Bispham's Principles of Equity*, Section 280.

The authoritative and ancient express prohibition "Thou shalt not" has been incorporated into our law in order to correct unjust discriminatory practices on the part of public service companies, and the courts and commissions should, without variableness or shadow of turning, enforce the equality of service and charges sought to be undeviatingly maintained for the benefit of all patrons alike by unhesitatingly characterizing such abuses as public wrongs calculated to destroy utterly the faithfulness and integrity of this service. The rule is one of sound public policy which, without regard to intention, or incidental pecuniary loss or advantage to the individual, inexorably reaches all contracts which contravene the purposes of the law. It is almost needless to say that a contract, as

“Exhibit A,” so repugnant to law and so inimical to the public interest is utterly void, and there is no power, whether called estoppel or any other name, that can breathe life into such a dead thing.

III.

DOES CONTRACT “EXHIBIT C,” ABROGATE PROVISION AS TO FREE SERVICE?

It is a self-evident proposition that if complainants had any right to free service under the original contract, “Exhibit A,” this right was subject to cancellation or abrogation by subsequent contract. Is such contract “Exhibit C?”

Complainants insist that contract “Exhibit C” does not abrogate the prior contracts guaranteeing free service, because it was made without their knowledge, consent or acceptance. Suffice it to say on this point, that in the absence of a showing that the Miller Township and Hannibal Telephone Company was not authorized to execute the contract, the presumption is that it had such authority.

Moreover; in accordance with the conclusions stated in prior paragraphs herein, as that part of contract “Exhibit A” seeking to guarantee free service to complainants, never had any legal or equitable basis upon which to rest, Clause 8 of contract “Exhibit C” assuming to withdraw this favor, is as useless to accomplish this object as though it had never been written, whatever else it may indicate touching the purpose of the defendant. As nothing was given, nothing could be taken away.

IV.

CHANGE OF LAW BY LEGISLATURE.

The Public Service Commission Law provides in express terms that “no telephone corporation shall directly or indirectly or by any special rate, rebate, drawback or other device or method charge, demand, collect or receive from any person a greater or less compensation for any service rendered or to be rendered with respect to communication

by telephone or in connection therewith, except as authorized by this act, than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect to communication by telephone under the same or substantially the same circumstances and conditions." Section 87, Par. 2.

That "no telephone corporation shall make or give any undue or unreasonable preference or advantage to any person, corporation or locality, or subject any particular person, corporation or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever." Section 87, Par. 3.

And that no telephone corporation shall directly or indirectly give any free or reduced service or any free pass or frank for transmission of messages by telephone, except to the persons and corporations specified in the law (Section 88, Par. 3), and which do not include complainants or the stockholders of any telephone corporation.

This Commission must regard this law as valid. We have no power to set it aside or declare it unconstitutional, or refuse to apply it in a proper case, even if just grounds for so doing should exist, which we do not believe exist in this case. Under our Constitution, Article IV, Section 1, vesting the legislative power of the State in the General Assembly, and Article VI, Section 1, vesting the judicial power in the courts, this Commission can neither repeal the statute forbidding discrimination, nor declare it unconstitutional. *State ex rel. Missouri Southern Railroad Company v. Public Service Commission*, 259 Mo. 704, 168 S. W. 1156, 1164; *County of Jackson v. Chicago and Alton Railroad Company*, 1 Mo. P. S. C. 699, 702; *Phelps v. St. Louis Iron Mountain and Southern Railway*, 2 Mo. P. S. C. 15, 28, 29.

1. *Service under prior contracts:*

Paragraph 4 of Section 87 of the Public Service Commission Law provides that nothing in the law shall be construed to prevent any telephone corporation from continuing to furnish the use of its lines, equipment or service

under any contract or contracts in force at the date the law takes effect or upon the taking effect of any schedule or schedules of rates subsequently filed with the Commission, as the law requires, (Section 88) at the rate or rates fixed in such contract or contracts; provided, however, that when any such contract or contracts are or become terminable by notice, the Commission shall have power, in its discretion, to direct by order that such contract or contracts shall be terminated by the telephone corporation party thereto, and thereupon such contract or contracts shall be terminated by such telephone corporation as and when directed by such order.

No argument is necessary to demonstrate that the contract or contracts mentioned in this law were intended to be valid and enforceable contracts under the law as it existed at the time of their execution. The legislators clearly did not mean that contracts inimical to the public interest or against sound public policy should be included.

Having reached the conclusion that the original contract "Exhibit A" was void, for the reasons above given, it follows that the provision of the law above quoted cannot be invoked by the complainants in order to obtain free telephone service in flagrant violation of the rule of the common law and of our present statute which, in substance, is only an affirmation of this reasonable and salutary rule.

2. *Impairing Obligation of Contract:*

Concerning the earnest contention of complainants that the Missouri statute forbidding discrimination, preferences and all forms of inequality in rates for telephone service (as above set forth) cannot be applied in this case, because such application would be in direct violation of that provision of both the federal (United States Constitution, Article 1, Section 10) and state (Missouri Constitution, 1875, Article II, Section 15) constitutions prohibiting the enactment of laws impairing the obligation of contracts, it may be suggested at the threshold of the discussion that it must first be made manifest that there was a valid contract cap-

able of enforcement before it can be urged that subsequently changes in the law impair its obligation. *New Orleans v. New Orleans Water Works Company*, 142 U. S. 79, 88. However, aside from this, we may proceed to consider whether the constitutional inhibition invoked is applicable to contracts of the nature here, even assuming the validity and enforceability of the contract "Exhibit A" by complainants.

In England from time immemorial and in this country from its first colonization, it has been a well established principle in law that the legislative branch of the government is vested with power to regulate private property which is devoted to public use. *Munn v. Illinois*, 94 U. S. 113, 130, 24 L. Ed. 77; *Spring Valley v. Schottler*, 110 U. S. 347, 4 Sup. Ct. 48, 28 L. Ed. 173; *Michigan Central Railroad Company v. Michigan Railroad Commission*, 236 U. S. 615, 35 Sup. Ct. 422, P. U. R. 1915 C, 263; *State ex rel. v. Bell Telephone Company*, 23 Fed. 539, EDV; *Griwn v. Gildsboro Water Company*, 122 N. C. 206, 30 S. E. 319, 41 L. R. A. 240; *Pond, Public Utilities*, Section 191. This includes the power to regulate rates to be charged by a corporation entrusted with a franchise of a public utility character for service, subject, however, to the limitation that the return must admit of a fair profit on the investment in order that the exercise of the power may not amount to taking of property for public use without due compensation; (*The Minnesota Rate Cases*, 230 U. S. 352, 433; *Public Service Commission Law*, Section 93) and also the further limitation against the impairment of the obligation of contracts. *McQuillin. Municipal Corporations*, 4, Section 1734, p. 3701.

The power of regulation is within the sovereign power of the state that grants the franchise or that suffers it to be exercised within its borders, unless forbidden by the state constitution. *State ex rel. v. Missouri and Kansas Telephone Company*, 189 Mo. 83, 100, 88 S. W. 41; *Danville v. Danville Water Company*, 180 Ill. 235, 54 N. E. 224; *Bluefield Water Works and Improvement Company v. Bluefield*, 69 W. Va. 1, 70 S. E. 772, 33 L. R. A. (N. S.) 759; *Madison*

v. *Madison Gas and Electric Company*, 129 Wis. 249, 264, 108 N. W. 65, 116 Am. St. Rep. 944, 108 N. W. 65.

The subject of the regulation of rates and charges of public service companies, as in this case a telephone company, being thus regarded in our legal system as essentially a governmental function, primarily within the exclusive jurisdiction of the state as the *parens patriae* of all residing and being therein, may be exercised by such sovereign authority, either directly by the state legislative department, or the state may in due manner authorize it to be exercised by public functionaries legally created by the state, whether such functionaries assume the form and name of commissions or commissioners (*State ex rel. v. Public Service Commission*, (Mo.) 168 S. W. 1156; *Saratoga Springs v. Saratoga Gas, Electric Light and Power Company*, 107 N. Y. S. 341, 122 App. Div. 203; *State ex rel. v. Wyandotte County Gas Company*, 88 Kans. 165, affirmed 231 U. S. 622; *McQuillan, Municipal Corporations*, 4, Section 1735), or cities, towns or municipal corporations. *State ex rel. v. Missouri and Kansas Telephone Company*, 189 Mo. 83, 99, 100, 88 S. W. 41; *St. Louis v. Bell Telephone Company*, 96 Mo. 623, 627, 628; *Home Telephone Company v. Los Angeles*, 211 U. S. 265, 271; *McQuillan, Municipal Corporations*, 4, Section 1734. In the latter instance the Commission or public corporation acts in the exercise of the power simply as the agent of the state:

A city may, if the power has been expressly conferred, contract for a reasonable rate during a reasonable time in such manner as to bind the State (*Vicksburg v. Vicksburg Water Company*, 206 U. S. 496, 508; *Freeport Water Co. v. Freeport*, 180 U. S. 587, 593), or the state may be bound where it has subsequently ratified the city's action in making the contract. *Los Angeles v. Los Angeles City Water Company*, 177 U. S. 558; *Minneapolis v. Minneapolis Street Railway Company*, 215 U. S. 417. For the reason that the power as to rates is continuing in its nature and that if it were contracted away a power of government would be extinguished *pro tanto*, the law favors its continuance in the

legislature or its agents, and will construe all doubt in favor of their possessing it. *Home Telephone Company v. Los Angeles*, 211 U. S. 265, 273; *Milwaukee, etc., Company v. Railroad Commission*, 153 Wis. 592; *State v. Superior Court*, 67 Wash. 37; *Dawson v. Dawson Telephone Company*, 137 Ga. 62. Hence, a city may fix a telephone rate and thereafter raise it without impairing the obligation of the contract. *Home Telephone Company v. Los Angeles*, 211 U. S. 265. However, a city may so bind itself, where it has discretion, concerning the regulation of rates by contract with a public service company, so as to preclude the city from thereafter altering the rates so fixed during the life of the contract. *Cleveland v. Cleveland City Railway Company*, 194 U. S. 517; *Manitowoc v. Manitowoc and Northern Traction Company*, 145 Wis. 13, 129 N. W. 925, 140 Am. St. Rep. 1056.

In one case, an ordinance fixed the rates of a water company. Later, the state created a public service commission, which permitted the water company to increase its rates. The city complained, contending that the act impaired the obligation of its contract with the water company. The court rejected this view, since it did not appear that the city was empowered, either expressly or by necessary implication, to bind the state. The mere adoption of the ordinance fixing the rate was not viewed as such an act as to bind the state in the premises. *Benwood v. Public Service Commission*, (W. Va.) 83 S. E. 295.

In a case relating to interstate commerce, the Supreme Court of the United States held that the obligations of contracts between individuals in such case are not impaired by subsequent legislative restrictions, even though they are thereby nullified, for the parties will be presumed to have had such a possibility in mind. The power of the state to act in matters appertaining to its original jurisdiction is not hampered by contracts made in regard to such matters by individuals. The legislature may in the exercise of its undoubted jurisdiction subsequently render them invalid. *Louisville and Nashville Railroad Company v. Mottley*, 219 U. S. 467.

The rule that the obligation of a contract between a municipality and a public service corporation as to rates cannot be impaired by subsequent legislation by the municipality, does not apply to contracts between public service companies and individuals. *Santa Anna Water Company v. San Beunaventura*, 56 Fed. 339. So contracts between a public service corporation and private consumers as to rates for the supply furnished are subject to modification by the municipality without impairing the obligation of contracts. *Knoxville Water Company v. Knoxville*, 189 U. S. 434, 23 Sup. Ct. 531, 47 L. Ed. 887, affirming 107 Tenn. 647, 64 S. W. 1075, 61 L. R. A. 888.

The law is firmly established that Congress or a state legislature, within their respective jurisdictions, has power to regulate common carrier and other public service companies, and such power is not destroyed or limited because the regulation may to some extent affect the power to contract or even existing valid contracts.

“One whose rights, such as they are, are subject to state restriction cannot remove them from the power of the state by making a contract about them. The contract will carry with it the infirmity of the subject-matter.” *Hudson County Water Company v. McCarter*, 209 U. S. 349, 357, 28 Sup. Ct. 529, 531, 52 L. Ed. 828.

“If the shipper sees fit to make a contract covering a definite period for a rate in force at the time he must be taken to have done so subject to the possible change of the published rate in the manner fixed by statute to which he must conform.” *Armour Packing Company v. United States*, 209 U. S. 56, 28 Sup. Ct. 428, 52 L. Ed. 681.

In a leading case a railroad company contracted with a man and wife who suffered damage while traveling on the road, in consideration of their release of any claim therefor, to issue free passes to them during their respective lives. Subsequently by amendment of the Interstate Commerce Act, it was made unlawful for interstate carriers to transport any person for a greater or less or different compensation than any other person, with certain exceptions. In

sustaining the amendment the Supreme Court of the United States held that it was in violation of the law for a carrier to issue interstate transportation in pursuance of a prior existing contract to do so as compensation for injuries received, and, even though valid when made, such a contract cannot now be enforced against the carrier. *Louisville and Nashville Railroad Company v. Mottley*, 219 U. S. 467, 31 Sup. Ct. 265, 55 L. Ed. 297, 34 L. R. A. (N. S.) 671, followed in *Re Southwest Missouri Railroad Company*, 1 Mo. P. S. C. 46, 50.

In *Union Dry Goods Company v. Georgia Public Service Corporation*, (Ga.) 83 S. E. Rep. 946, a dry goods company entered into a contract with an electric company for supplying electricity for lighting at a named price for a period of five years. At this time there was neither statute nor rule of the Commission regulating rates for the period specified. After the contract had run more than a year (both parties complying therewith) on application the State Commission authorized an increase of rates to the electric company for the class of service covered by the contract.

Concerning the effect of the order prescribing a higher rate as reasonable upon the lower rate stipulated in the contract, the court said that when the State Commission acted "the rate thus prescribed had the effect of overriding the contractual rate between the public service company and its patrons, and made anterior to the Commission's order."

Superior v. Douglass County Telephone Company, 141 Wis. 363, 368, 122 N. W. 1023, relied on by complainant, is easily distinguishable from the principles announced in the above cases. In that case it was held that a contract between a city and a telephone company, whereby the company in order to afford its patrons connection with the departments of the city government, agreed with the city to install and maintain telephones free of charge in such departments during the period that the company should operate a telephone system in the city (and such telephones were installed and put into operation) is not affected by

subsequent state legislation forbidding discriminatory rates, but is protected by the constitutional provision against impairing the obligation of contracts.

Replying to the contention that such contract was contrary to the common law rule, that a quasi-public corporation should afford the service it offers to every person on the same basis that it does to any one under the same or similar circumstances, and that it was against sound public policy, the court said that public policy in this relation is that principle which maintains that a person cannot rightfully do or bind himself to do that which is inimicable to the public good. "Discriminatory contracts between public utility corporations and their patrons which are held to be void as inimical to the public good are so held because unreasonable advantage is thereby given to one customer or a class over others, whereas all have a moral and legal right to equality of treatment. In case of the contract being between a private corporation and the state or other public corporation, whatever advantage the particular customer has over general customers, obviously inures to the benefit of the latter in the aggregate. In other words, in the ultimate there is no discrimination which is inimical to the public good, and hence no violation of public policy. Such is the situation here. If we concede that the appellant (city) under the contract was a favored customer in that if the same advantage had been granted by contract to a private corporation, the agreement would have been unenforceable; still in the circumstances here the contract is enforceable because the advantage is to the public, instead of to any particular member thereof."

Moreover, in that case the state law contained this express provision: "The furnishing of any public utility of any product or service at the rates and upon the terms and conditions provided for in any existing contract executed prior to (date of passage of the law) shall not constitute a discrimination within the meaning specified."

It is thus manifest that the doctrine of this case is clearly distinguishable from the principles above stated, because,

first, the advantage favored the public, and hence was not contrary to sound public policy, and second, the law involved in express terms, excepted the contract from its operation.

This Commission has ruled that it has power to regulate the rates and charges of a water company operating under a franchise granted by a city during the life of such franchise, notwithstanding the franchise constitutes a contract between the city and the water company. *Cole v. Fort Scott and Nevada Light, etc., Company*,* 1 Mo. P. S. C. 130, 140, et seq.

Unhampered by contracts of corporations or individuals fixing unreasonable rates, or contracts permitting unjust discrimination, or contractual restrictions of any nature inimical to the public interest, the Public Service Commission Law is designed to invest ample power in this Commission, in harmony with the exceptions expressed and implied therein, to require all public utility companies operating in the State, not only to serve the public at reasonable rates, but to require them also to serve the public efficiently and without discrimination. This is imperatively demanded by modern industrial conditions. *Wyman Public Service Corporations*, 2, Sections 1281, 1289, 1890. Clearly this cannot be accomplished if prior contracts between individuals and corporations fostering unjust discrimination are recognized as enforceable. By such recognition the just purpose of the law would be defeated.

Notwithstanding the contract "Exhibit A" may be regarded as valid and existing for the benefit of the 65 subscribers, including the three complainants herein, the right of the State to interfere whenever the public weal demanded was undoubted. In this view the contract may be regarded as remaining valid between the parties to it and for the benefit of the complainants until such time as the State saw fit to exercise its paramount authority by the enactment of the Public Service Commission Law, and then its validity and operation ceased.

*See Commission Leaflet No. 26, p. 1191.

Furthermore, the fixing of rates being strictly a governmental function, the mere execution of the contract can in no sense be regarded as requiring the State to surrender its power in this respect. It is needless to say that the State never conferred authority upon the two telephone companies in the execution of the contract to exclude the State from exercising its just powers of regulation.

If the sovereign power of the State to regulate rates is considered as a branch of the police power (and this view is sometimes taken) by express mandate of our organic law its exercise "shall never be abridged or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals or the general well-being of the State." Constitution Missouri, 1875, Article XII, Section 5.

Invoking this doctrine, it is obvious that the contract "Exhibit A" abridges the police power of the State, in that it infringes the equal rights of individuals and militates against the well-being of the State.

Therefore, the law forbidding discrimination is a proper exercise of the State police power, and indeed, in view of the constitutional provision, the obligation rested upon the State to pass such law.

Our Supreme Court has said that the Public Service Commission Act "is an elaborate law bottomed on the police power." *State ex rel. v. Kansas City Gas Company*, 254 Mo. 515, 534, 535.

"It is the settled law of this court that the interdiction of statutes impairing the obligation of contracts does not prevent the state from exercising such powers as are vested in it for the promotion of the common weal, or are necessary for the general good of the public, though contracts previously entered into between individuals may thereby be affected. This power which in its various ramifications is known as the police power is in exercise of the sovereign right of the government to protect the lives, health, morals, comfort and general welfare of the people, and is paramount to any rights under contract between individuals."

Manigault v. Springs, 199 U. S. 473, 480, 26 Sup. Ct. 127, 130, 50 L. Ed. 274.

Wherefore it follows that the complaint herein should be dismissed, and it is so ordered.*

July 20, 1915.

IN THE MATTER OF THE APPLICATION OF FARMERS EXCHANGE
TELEPHONE COMPANY AND J. A. KILLIAN FOR PERMISSION
TO SELL AND TRANSFER, AND OF SEYMOUR TELEPHONE
COMPANY FOR PERMISSION TO PURCHASE, OWN AND OPE-
RATE, THE TELEPHONE PLANT AND SYSTEM OF SAID FARM-
ERS EXCHANGE TELEPHONE COMPANY LOCATED AT SEY-
MOUR, WEBSTER COUNTY, MISSOURI.

Cases No. 770 and 771.

Decided August 30, 1915.

Consolidation of Competing Companies Authorized.

ORDER.

Application having been made, under the provisions of the Public Utilities Commission Law, to the Public Service Commission by Farmers Exchange Telephone Company, J. A. Killian and Seymour Telephone Company for the consent of the Commission to the sale and transfer by the said Farmers Exchange Telephone Company and J. A. Killian, and to the purchase, ownership and operation by the said Seymour Telephone Company of the telephone exchange and system of the said Farmers Exchange Telephone Company and J. A. Killian, located at Seymour, Missouri, and it appearing to the Commission that a public hearing upon said application is not necessary to be had, and that the order prayed for therein is necessary and proper to be granted.

Now, after due consideration,

It is ordered, 1. That the consent of the Commission be and the same is hereby granted to the sale and transfer by

*Copy of order omitted.

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the said Farmers Exchange Telephone Company and J. A. Killian, and to the purchase, operation and ownership by the said Seymour Telephone Company of the telephone exchange and system of the said Farmers Exchange Telephone Company and J. A. Killian, located at Seymour, Webster County, Missouri, together with all franchises, rights, easements and privileges, and all other property belonging to or used in or in connection with said telephone exchange and system, or the operation thereof; all for the price and sum of \$1230.

Ordered, 2. That nothing herein shall be considered as a finding by the Commission of the value of the property herein authorized to be sold and transferred, either as to the whole or any part thereof, nor as an acquiescence in the values placed upon said property by said parties, nor as an approval of the consideration passing therefor.

Ordered, 3. That nothing herein shall be construed as an approval by the Commission of the rates now charged by said parties for service, nor as a finding by the Commission that said rates are reasonable, and not excessive, and not discriminatory.

Ordered, 4. That nothing herein shall be construed as a finding by the Commission that the service of said parties is adequate, efficient, or sufficient.

Ordered, 5. That this order take effect on this date.

Jefferson City, August 30, 1915.

MONTANA.

Public Service Commission.

**FARMERS' COMMITTEE OF LAUREL v. THE MOUNTAIN STATES
TELEPHONE AND TELEGRAPH COMPANY.**

Report and Order No. 125.

Decided July 26, 1915.

**Restoration of Free Interexchange Service Denied — Cancellation of
Discriminatory Contracts Ordered.**

APPEARANCES:

Charles A. Taylor, for the complainant.

C. G. Cotton, for the defendant.

REPORT AND ORDER.

In this matter the complaint alleged that formerly the telephone patrons in Laurel and vicinity were served by The Mountain States Telephone and Telegraph Company and the Billings Automatic Telephone Company. During the period of rivalry, free toll service was granted from telephones connected with the Laurel exchange to telephones connected with the Billings exchange by both operating companies.

The complainants assume that by reason of the fact that this free toll service was voluntarily granted, that it must have been profitable. Complainants allege that about October 1, 1914, The Mountain States Telephone and Telegraph Company purchased the lines and equipment of the Automatic company, and soon thereafter the defendant placed into effect a toll charge of 10 cents from 'phones connected with the Laurel exchange to 'phones connected with the Billings exchange. It is also alleged that flat rates for service now in force in the vicinity of Laurel, Montana, are not uniform in that patrons pay various sums for monthly rentals, to-wit, \$1.50, \$2.00, \$2.25 and \$2.75.

There was no testimony introduced sustaining the assumption in the complaint that because free toll service was granted during the period of competition, the telephone exchange was profitable, nor could this fact be established without a physical valuation of the plant taken in connection with the annual statement of the operation of the business. The Laurel exchange would then have to be charged with its overhead expense, including its share of the overhead expense of the general office. Depreciation charges would have to be determined and in fact all of the various items would have to be considered, as is lawful and customary in determining a reasonable rate for carriers and public utilities.

Free toll line service between Laurel and Billings might have been indulged in at the expense of some other exchanges not enjoying competition. It cannot be denied that a toll service is a valuable service and should be charged for on its merits. It is a present day necessity, and to afford it an investment must be made in a toll line connection separate and apart from that portion of the plant constructed for local exchange service. Apart from this argument discrimination is unlawful. All other toll service in the State is chargeable under a uniform scale of rates and this line must conform to the general rule and come within the provisions of the law.

The defendant and its predecessors in interest have contributed to this complaint by their competitive methods and by extending the lines from their Billings exchange into Laurel territory. Doubtless patrons have indicated a desire to be connected with the Billings exchange for their own convenience. The Billings exchange is the older, and the rural lines out of Billings had to be added to from time to time as new business was acquired, until the present situation has developed with the Billings connections far into Laurel territory.

It will be necessary at some future time to take a physical valuation of the telephone plants in Montana. This valuation, together with the record of operation ex-

penses and operating income, will become a basis for determining the reasonableness of rates. Prior to taking this valuation, the rates must be standardized and discriminations discontinued. Of what value would a physical valuation be in determining a reasonable rate, if one community received a free service for which another community was being charged? For the present in determining a reasonable rate, this Commission is confined to comparisons which are not altogether satisfactory. For the reasons given above, the Commission will hold that a charge of 10 cents for a two-number call and 15 cents for a special party call, between the Billings district and the Laurel district, or vice versa, is a reasonable charge.

It also appears that there are some old special rental contracts in existence whereby the older patrons are receiving rentals at different prices than afforded to many later patrons. This is discrimination and must be discontinued. The old contracts are subject to cancellation on notice, and the defendant should give the proper notice and on expiration of the time mentioned in the contract, the service should be discontinued or a new standard contract executed.

Wherefore, in view of the testimony and of the foregoing statement of facts,

It is ordered, That the petition of complainants be denied; that the defendant upon receipt of a certified copy of this statement and order, give notice canceling all telephone rental contracts that are discriminations as defined above; and that said notice shall be no longer than the length of time provided for in each individual contract; and that the defendant shall, within thirty days from receipt of certified copy of this statement and order, file a revised schedule of standardized rates for Laurel exchange, based on the mileage block system.

Helena, Montana, July 26, 1915.

NEBRASKA.

State Railway Commission.

IN THE MATTER OF THE APPLICATION OF THE LINCOLN TELEPHONE AND TELEGRAPH COMPANY FOR AUTHORITY TO DISCONTINUE ITS GROUNDED SERVICE WITHIN THE CITY OF ASHLAND AND TO CANCEL ITS RATES FOR SAME.

Application No. 2195.

Decided July 15, 1915.

Discontinuance of Grounded Circuit Service Rates Authorized—Advantages of Metallic Over Grounded Circuit Service Discussed—Effect of Grounded Circuit Farm Lines on Metallic Service Within City Considered.

Applicant sought authority to discontinue its schedule of rates for grounded circuit service for its exchange at Ashland.

The subscribers protested on the ground (1) that the patron had the right to select the kind of service that he desired and that the company could not arbitrarily require him to change; (2) that misrepresentations had been made by the company in soliciting subscribers from grounded to metallic service, and (3) that because of an agreement with the farmers on the exchange it would be impossible for the company to give full metallic service for a period of five years.

The company contended that the physical conditions within the city of Ashland, due to the existence of an electric light plant, made the operation of a grounded telephone system a practical impossibility, and that imperative reconstruction of the property, because of depreciation, made unwise and uneconomic a continuation of the grounded service. Defendant admitted that some misrepresentations had been made to subscribers in the campaign of solicitation and that some subscribers were cut over to metallic service over their objection or without having been consulted, and further admitted that an agreement was entered into with the farmers served by the Ashland exchange whereby the present grounded rates were not to be disturbed for a period of five years.

Held: That in view of the essential differences between a grounded and metallic telephone plant, the probability of cross talk upon a grounded system, the possibility of eliminating both trouble from earth currents and induction from other circuits by means of a metallic system and the

feasibility of enclosing a large number of wires of a metallic system in a cable, the installation of a metallic system is a logical step in the development of a telephone plant;

That because a telephone company has set out to furnish a certain service at a certain rate does not constitute an insurmountable obstacle to its changing its service and rates if the public interest demands it;

That the responsibility of determining when to make the change from grounded to metallic circuit system should be upon the telephone company and such readjustments should be permitted notwithstanding that they are objected to by certain subscribers who may be inconvenienced or who may be opposed to the increased rate that may necessarily follow;

That under the conditions as they existed in Ashland it was necessary for the applicant to reconstruct its plant, that being confronted with this situation it was not only proper but desirable that the company should consider the installation of a metallic plant, that the company acted reasonably and with a proper regard for the public interest when it decides upon the installation of the metallic equipment;

That the misrepresentations made should be deplored but that they were not so serious as to make impossible an ultimate understanding that will be mutually satisfactory to the company and the subscribers;

That the fact that the applicant had entered into an agreement with the telephone committee of the Farmers Union of Saunders County under the terms of which the present grounded system rates were not to be disturbed, does not make satisfactory metallic service in the city of Ashland impossible as these farm lines are outside of the zone of electrical interference or are protected within cables, that furthermore a traffic study shows that the bulk of traffic in which city subscribers are interested is within the city itself and therefore the use of the farm lines is of minor concern to them.

APPEARANCES:

For applicant, *Frank H. Woods* and *Leonard E. Hurtz*.

For remonstrators, *H. A. Bryant*.

OPINION.

TAYLOR, Commissioner:

On June 6, 1914, the Lincoln Telephone and Telegraph Company made application for authority to establish a schedule of rates for metallic service for its exchange at Ashland, these rates to be supplemental to the schedule already in effect for grounded service. As the rates for grounded service were still to be available at the option of the subscriber and as the rates applied for were standard

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for exchanges of that size, they were approved.* (Application No. 2136.)

On August 22, 1914, the company made application for authority to discontinue its grounded service within the city of Ashland and to cancel its rates for same. In making application the company represented that it had but recently installed a new switchboard, extended its cable plant and made the city exchange full metallic. It also stated that a solicitation of the subscribers within the city had been completed and that out of a total of 288, 265 had consented to take the metallic service, while but 23 had refused and were still receiving grounded service. On this representation it appeared that a large majority of the subscribers within the city were favorable to the metallic service and the Commission approved the application.† Subsequent to the issuance of the order to that effect, protest was entered by a number of the patrons at Ashland, and on August 31, 1914, the Commission issued a supplemental order,‡ cancelling the order of approval, the purpose being as stated to leave "the telephone situation in Ashland just as it was prior to the issuance of the order of August 22, 1914." Whereupon the matter was set down for hearing for October 23, 1914.

The protest of the patrons is based principally on the grounds, (1) that the patron has the right to select the kind of service he desires and that the company cannot arbitrarily require him to change; (2) that misrepresentation was used by the company in soliciting subscribers from grounded to metallic service, and (3) that because of an agreement with the farmers on the exchange it will be impossible for the company to give full metallic service for a period of five years.

In answer the company contends that the physical conditions within the city of Ashland, due to the existence of

*See Commission Leaflet No. 33, p. 780.

†See Commission Leaflet No. 35, p. 103.

‡See Commission Leaflet No. 35, p. 104.

an electric light plant, make the operation of a grounded telephone system a practical impossibility, and that imperative reconstruction of the property because of depreciation make unwise and uneconomic a continuation of the grounded service; (2) it admits that some misrepresentations were made to the subscribers in the campaign of solicitation and that about nineteen were cut over to metallic service and rates over their protest or without having been consulted; (3) it admits that an agreement was entered into with the farmers served by the Ashland exchange under the terms of which the present grounded rates are not to be disturbed for a period of five years.

For convenience the issues involved in the case will be taken up in the order as presented above.

(1) Does the patron of a telephone company have the right to demand the kind of service he desires, or can the company readjust its plant and rates to meet changing conditions?

This question does not involve the right of the subscriber to select any class or kind of service that the company holds itself out to give. There can be no dispute as to his right to choose either grounded or metallic, flat rate or measured, single-line or party-line service, provided the company has filed a schedule covering such classes of service. A company cannot escape the obligation that is upon it as a common carrier to furnish such service as may be defined in its schedules upon demand, provided such schedules are approved by the Commission and the patron pays or offers to pay for the same. The question here involved is as to whether such a schedule is irrevocable, or whether good public policy justifies a company, subject, of course, to the supervision of the Commission, in exercising its own judgment and discretion as to how and when its plant shall be reconstructed and improved, notwithstanding it is unable to secure the unanimous consent of all its patrons.

In considering the proposition here presented it appears necessary to consider the essential difference between a

grounded and metallic telephone plant and the conditions that may make it necessary to change from one to the other. The first type of telephone that became commercially successful was that commonly referred to as the grounded system. In this type there is a single wire running from the telephone instrument to the central office, this wire being grounded at either end, the electric circuit thus being completed through the earth. Under favorable conditions this system affords efficient service at a minimum of investment and operating cost. In the operation of such plants, however, serious disadvantages developed, the most serious arising from interference with the talking circuit from electrical currents in the earth. It was found that these currents cause cross-talk between the lines, bring noises of various kinds to the talking circuit and at times make intelligent communication impossible. Cross-talk is also caused by induction between the wires themselves and if there are a large number of wires on one pole line this trouble is aggravated. The introduction of currents from an electric generating plant into the field of a telephone system invariably creates havoc with the service.

In order to meet this difficulty it has been found necessary to string a second wire for each circuit, thus dispensing with the circuit through the earth. The complete metallic circuit thus provided overcomes almost entirely the trouble from earth currents, and at the same time, through a transposition of the wires at certain intervals, makes possible the prevention of induction from one circuit to another. The latter advantage is important for the reason that it permits the enclosing of a large number of wires within a cable. While the wires of a grounded plant can be placed in a cable the result is far from satisfactory because of the induction, which, of course, is increased as the wires are brought in closer proximity to each other. Trees interfere greatly with telephone wires and in a grounded system, where there are a large number of wires on the poles, trouble from this source is general and very much aggravated. The enclosing of the wires in a cable

reduces the possibility of interference from such sources, does away with the trouble arising from the open, non-insulated wires coming in contact with each other and affords protection from the weather. On the other hand, the overcoming of induction by the use of metallic circuits makes it practical and very desirable to enclose them in circuits, particularly in the territory close to the central office, where the wires are numerous.

The installation of a metallic system, it will be seen from the above, is a logical step in the development of a telephone plant, and may be rendered imperative by changing physical conditions. While grounded plants are still very generally in use they are rapidly being replaced with metallic equipment, as it is recognized by experienced telephone men that when a grounded plant has been in service for from eight to twelve years and reconstruction becomes necessary, sound economy and the public service demand the substitution of metallic equipment. The public is gradually demanding a higher standard of service and telephone men understand that sooner or later the patrons of any company will demand metallic service. To replace a grounded plant, therefore, with a grounded plant when it is reasonably certain that the better equipment will be demanded in the course of time is poor economy, both from the standpoint of the company and the public. It is exceedingly unwise when the physical conditions become such that it is impossible to operate the grounded plant satisfactorily. The increasing use of electricity for light, heat and power makes the future of any grounded plant more or less uncertain and precarious. It would appear, therefore, that ordinary business foresight should prompt a company to anticipate the changing over of its plant from a grounded to a metallic basis, and that it should plan, and should be permitted, to make such change at the time most advantageous for it. When that time arrives it does not appear reasonable that it should be prevented from making the improvement because a small number of subscribers object to the change. The responsibility of determining

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when to make necessary improvements is upon the company. The subscribers demand good service but it is not for them to prescribe how that service shall be furnished. They know when they receive poor service, although they may not, and probably do not, know what causes it. The subscriber judges the company by the results he gets. If he has trouble he has no means of knowing what causes it. It may be in his instrument, the wires, the switchboard, the operators, the instrument at the other end of the line or in a combination of all of these things. It is the duty of the company to locate and correct it. Having the duty, it should at the same time have the right to exercise its own judgment as to how to perform it. If the service as a whole is benefited by the improvement the demands of the few should not be allowed to govern.

Because a company has set out to furnish a certain service at certain rates does not constitute an insurmountable obstacle to its changing its service and rates if the public interests demand it. As stated in the beginning, it is the right of the individual patron to demand, and the duty of the company to furnish, upon the terms and conditions promulgated by the company, subject to the regulation of the proper authority, the best service that can be given, but that does not necessarily imply that the individual has the privilege of vetoing measures of improvement simply because they may interfere with his existing relations with the company. To permit that would be to effectually prevent any progress or improvement in the telephone business. Improvements ordinarily cost money and unless a company can have the assurance that at least a portion of the expense will be borne by the patrons, it will be slow to make changes. And it is a well established fact that a metallic system costs more to construct and operate than a grounded system. Double the amount of wire is required, and that calls for more and larger poles, which in turn calls for more cross-arms, insulators and other equipment. Open wire must be replaced with cable and the whole plant brought up to a uniform standard. The additional prop-

erty used calls for additional maintenance. The money necessary to pay for and install the new property must, of course, be furnished by the stockholders, but the money necessary to pay a reasonable return on this added investment together with the added expense for maintenance and operation must come out of the earnings.

If, upon the commencement of operations of a telephone company, it could be determined that a grounded system would always be used and that under no circumstances would a change be made to a metallic system, it would be possible to establish a scale of rates calculated only to take care of such a plant, and such rates could undoubtedly be made lower than if they were made in anticipation of probable developments and necessary improvements. Practically all companies, however, at the beginning, established rates sufficient only to operate and maintain a grounded plant, and when the time arrives for the change, it is necessary to raise the rates. Ordinarily, a majority of the patrons consent to the increased charge because they are desirous of securing the improved service and realize that it cannot be furnished on the old basis.

A consideration of these facts and circumstances convinces the Commission that a telephone company should be permitted to make reasonable and necessary changes in its plant, notwithstanding such readjustments are objected to by certain subscribers who may be inconvenienced or who may be opposed to the increased rate that may necessarily follow. To be sure, in exercising this privilege the company should have in view at all times the interests of its patrons as a whole, such interests being paramount to all other considerations. It is to be expected that good judgment and ordinary business foresight should attend the transaction that the interests of both the company and the public be conserved.

In applying that conclusion to the instant case, we find that the Lincoln Telephone and Telegraph Company was justified in considering and in attempting to bring about a change from a grounded to a metallic system on its ex-

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change at Ashland.* The record discloses that in 1911, in order to relieve that bad condition of the service resulting from the interference of electric currents generated by a lighting plant in the town and because the wires constituting the grounded system had become so congested as to be continually causing trouble, and for the further reason that the portions of the plant had to be rebuilt, the Nebraska Telephone Company, from whom applicant later acquired the plant, installed a large amount of cable, practically covering the city territory of the Ashland exchange with its cable plant. In order to avoid as much of the induction as was possible without making the plant completely metallic, the lines in cables were made metallic, being grounded at the switchboard and at the instruments. While this improved conditions materially, it was only a partial remedy as most of the lines had grounded return circuits. Because of the general condition of the plant and for the particular reason that the electric light company commenced to furnish a day service, applicant found it imperative in the spring of 1914 to make the plant within the city limits metallic, and in the reconstruction installed a switchboard of the latest type. It happened, too, that the telephone company and the electric light company had from the first used the same pole lines for some of their main "leads." This produced an unsatisfactory condition from the standpoint of the telephone company and it was necessary to remove its wires from these poles and place them on other poles.

There is conflicting evidence as to the quality of service subsequent to the change to metallic, sixteen out of the twenty-eight witnesses for remonstrators asserting that the service was no better, some even contending that it was worse. The other twelve admitted that it had been improved and that they had no fault to find with it. H. A. Kelley, for the past four years wire chief of the exchange,

*For the reasons heretofore set forth, the Lincoln Telephone and Telegraph Company was authorized to substitute metallic service for grounded service at its exchange at Bennett and to establish a scale of rates for such metallic service. Application No. 2246. Decided August 4, 1915.

testified that the first morning he took charge of his work he found reports of 130 cases of trouble, the reports covering the preceding twenty-four hours and that the same conditions prevailed for some time after he assumed his duties. During the week just previous to the hearing, however, the "troubles" reported averaged but 6 or 8 a day. C. D. Perrin, district traffic chief, whose duty it is to supervise the service at Ashland, testified that the service is now improved 100 per cent. over what it was when he took charge two years ago. In addition to supervising the work of the operators it is the duty of Mr. Perrin to interview users of the service, and this he did in Ashland, the favorable reports he received constituting a part of the evidence upon which he based his opinion as to the improvement in the service. B. E. Forbes, engineer for the Commission, made an inspection of the plant and found the physical improvements to be as applicant had represented and the plant adequate for the giving of efficient service. He made several test calls and found the service satisfactory. The reconstruction work that was under way until July doubtless interfered with the service to some extent, but following the completion of the work the service should have been, and undoubtedly was, materially improved. It certainly could not have been worse, as a few of the witnesses testified. The record is clear that the service had been poor and that there was need for substantial improvement. It is equally clear that the improvements that had been made promised to remedy the conditions complained of.

Under the conditions as they existed at Ashland it was necessary for applicant to reconstruct its plant. The public service absolutely demanded it. Confronted with such a situation, it was not only proper but desirable that the company consider the advisability of installing a metallic plant. And the Commission is of the opinion, and so finds, that under the circumstances it acted reasonably and with a proper regard for the public interest when it determined on the installation of the metallic equipment.

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(2) *Was misrepresentation used by applicant and, if so, to what extent should that fact be considered in this case?*

It is clear that some misrepresentation was used by the company in its effort to induce subscribers to change from grounded to metallic service. In fact, the company admits that its solicitors did not present the matter correctly in some instances. Perhaps the most serious misrepresentation complained of was that charged to Charles Avey, a solicitor who did much of the work of interviewing subscribers. In urging certain subscribers to take the metallic service he represented that the company was installing a central energy system whereby it would be possible for the subscriber to signal the operator by simply taking the receiver off of the hook, thus dispensing with the turning of a crank. The record shows that some signed because of this proposed improvement. The company contemplated installing no such equipment. Also, Mr. Avey represented that patrons taking two-party residence service could have desk telephone if they preferred them to the wall sets. A number took advantage of this offer in signing contracts. One or two remonstrators contend that they were promised that the entire system would be made metallic, including the farm lines.

With respect to his representations regarding the installation of a central energy plant Mr. Avey explains that he had been accustomed to working with a plant of that type and, having noticed that a new switchboard was being installed and that its operation was similar to that of a common battery board, assumed that it was such and so stated to subscribers. When district manager Caman, who had charge of the solicitation at Ashland, learned that Mr. Avey was making these representations he immediately took steps to enlighten him as to the real facts and instructed **him** to again visit those to whom he had made such statements and see that correction was made. At the same time he ordered Mr. Avey to again call upon those to whom he had promised desk sets and explain that it was not the intention of the company to furnish such equipment for that class of service.

The action of Mr. Avey, even though it may have been taken under an honest misapprehension of the facts, was not only unfortunate but entirely inexcusable, so far as the responsibility of the company was concerned. It was the duty of the company to see that its solicitors were thoroughly informed as to the changes that were proposed and as to just what service the patrons could have under the new contracts. Mr. Avey and Mr. Butts, the local manager who assisted in the canvass, should have been instructed down to the last detail with respect to the conditions under which the subscribers were to be solicited. It appears, however, that there was more or less confusion in the minds of both as to just what the company had to offer for the increased rates for which it was asking. The misrepresentation, though subsequently corrected, aroused distrust of the company's motives and made it appear that it was attempting to take advantage of its patrons. Undoubtedly, much of the agitation and dissatisfaction attending the case is due to the methods employed in the campaign, and it is probable that had the work been straightforward and true to the facts there would have been much less objection to the proposed change. In view of these loose statements as to the intentions of the company, it is not surprising that when the latter found it necessary to install lightning arresters at each telephone, the subscribers who had refused to sign the contracts for metallic service took it for granted that an attempt was being made to force the metallic service upon them. It was shown clearly at the hearing that the installation of the lightning arresters was a necessity as a matter of protection and had nothing to do with the change from grounded to metallic equipment, being as necessary to the one as to the other.

The misstatements, having aroused suspicion of the purpose of the company, prompted a more aggressive opposition to the proposed change and resulted in a counter campaign, as a result of which several who had signed contracts subsequently refused to pay for the new service. When it became necessary, therefore, to make the "cut-

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over " to metallic, there were nineteen, in addition to those who had originally refused to accept the new service, who were arbitrarily charged the new rates.

Notwithstanding the misrepresentation referred to, the record does not sustain the contention of remonstrators that contracts were obtained by duress and threats. During the period from August 22 to August 31, the interval covered by the order of the Commission authorizing the cancellation of the grounded rates, it was proper for applicant to insist that all patrons take the metallic service and pay the rates that had been approved for same. If, in attempting to collect such rates during that period, threats were made of discontinuing the service in event of non-payment, that could hardly be construed as a part of the campaign looking to the installation of the new service. In their zeal in endeavoring to induce patrons to agree to take the metallic service the representatives of the company may have predicted, and no doubt did predict, that the majority would give their consent and that, in that event, the grounded service would be abolished. While that may have constituted an inducement to some to sign, it could hardly be interpreted as a threat. Indeed, some of the remonstrators testified that they withheld giving their assent to the change for the reason that they desired to learn what the majority proposed to do. It is not established, however, that the company attempted to accomplish its purpose by threats, as charged. Rather, it would appear that remonstrators were inclined to misconstrue certain statements used because of the misunderstanding that had arisen. Then, too, there appears to have been a rather determined effort on the part of a few to resist the change regardless of the necessity for it.

In seeking the equity in this phase of the controversy the Commission is inclined to rely on the results of the original canvass made by applicant, making due allowance, of course, for the methods employed. Mr. Butts, local manager, testified that 138 subscribers signed contracts for metallic service. In addition, at least 100 gave their

verbal consent to take the service, declining for one reason and another, to sign contracts. Of the latter number 61 actually paid for the new service. There are 261 subscribers on the city exchange. Of that number, therefore, 199, or over 75 per cent., indicated a willingness to subscribe to the new rates and service. Of the 28 remonstrators who testified at the hearing, 20 had refused to sign contracts or agree to take the new service, although 2 of this number paid for the metallic service and 1 offered to take it if the majority did. Eight signing contracts subsequently became dissatisfied for various reasons and refused to pay the new rates. It is clear, however, that a large majority of the remonstrators are those who were opposed to the change from the first, largely because of the increase in the rates, and who were, therefore, not influenced by any representations made by the company. Remonstrators submitted a petition representing about 135 telephones, drawn in the form of a demand upon the company to reinstall grounded service. As this petition was circulated in October at which time, under the supplemental order of the Commission, both schedules of rates were on file, it can hardly be accepted as a test of the demand for metallic service, for the reason that at that time the metallic equipment was in operation and it was possible to secure the improved service at the grounded rates. It is quite significant, however, that but slightly more than 50 per cent. of the subscribers could be induced to sign it even under such favorable circumstances. From this analysis of the results of the campaign and the subsequent counter campaign, the Commission is convinced that a substantial majority of the city subscribers on the exchange were favorable to the installation of a metallic system. While, as stated in the forepart of this opinion, the change from grounded to metallic cannot be made wholly contingent upon the wishes of the subscribers, their preferences should, of course, be given consideration. If a substantial majority indicate a desire for a metallic plant the improvement should not be abandoned solely because the consent of every subscriber cannot be obtained. It is a prac-

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tical impossibility to secure unanimous consent to any proposition, no matter how meritorious it may be. As we have shown, the physical exigencies of the situation at Ashland demanded a change and while the consent of all patrons was very much to be desired the necessities were such that the change had to be made even if there were some patrons to object to it. The misrepresentations made are to be deplored, but the company appears to have made an honest effort to correct them, and in any event they were not so serious as to make impossible an ultimate understanding that will be mutually satisfactory.

(3) *Did applicant enter into an agreement with the farm subscribers on the Ashland exchange, under the terms of which the present grounded rates are not to be disturbed for a period of five years, and, if so, does that make impossible satisfactory metallic service in the city of Ashland?*

It is admitted by applicant that it entered into an agreement with the telephone committee of the Farmers' Union of Saunders County, that the toll and farm line rates for the Ashland exchange would not be changed for a period of five years without the consent of said organization, said agreement being made subject to modification by this Commission. While it does not so state, the presumption is that the grounded service on farm lines will be continued during the life of the contract. The record is not clear as to when the agreement was entered into but references to it make it appear that it was some time during the year 1914.

Remonstrators insist that the existence of this agreement makes impossible the complete reconstruction of the Ashland exchange on a metallic basis, for five years at least, and that during that period the company will be unable to give first-class metallic service to city subscribers. There are about 475 farm subscribers on the exchange. It is not necessary here to discuss the causes which lead the company to enter into this contract, although it may be proper to suggest that it should have been slow to assume such an obligation in view of the conditions as they existed on that exchange.

We have shown that the prime reason for making the plant metallic in Ashland is the existence of an electric generating plant in the town and the further reason that about a year ago this plant commenced to furnish day service, thus seriously interfering with the telephone service for twenty-four hours of the day. Aside from certain lines extending north from town past the plant, the interference from this source, in so far as city subscribers are concerned, has been overcome by the installation of metallic equipment. The lighting plant cannot now interfere with farm lines for the reason that, with the exception of those just mentioned, they are carried in cables to the city limits and are thus outside the zone of interference. While the installation of the metallic equipment will be of benefit to the farm lines, the necessity for the changes, on account of electric currents, did not exist, as it did for that portion of the system located within the city. Furthermore, by far the greater portion of the traffic on the farm lines is that between the farmers themselves, just as the bulk of the traffic on city lines is between city subscribers. A "peg count", or record of all calls handled through the Ashland exchanges for two days, June 9 and 10, 1915, shows the following results:

PEG COUNT OF ALL CALLS ORIGINATING ON ASHLAND EXCHANGE FOR
PERIOD OF TWO DAYS.

June 9, 1915.

Farm to City.....	279
Farm to Farm.....	1,387
City to City.....	1,288
City to Farm.....	291
TOTAL CALLS	3,245

June 10, 1915.

Farm to City.....	359
Farm to Farm.....	1,273
City to City.....	1,272
City to Farm.....	426
TOTAL CALLS	3,330

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Combining the results for the two days, we find that the city subscribers participated in 3915 calls, of which 2560 were limited exclusively to the city lines. One-third, or 1355, constituted the traffic between the city and farm subscribers. It will be seen, therefore, that the city subscribers' interest in the system is not to be measured by the number of subscribers on the system. In this case there are 261 city subscribers and about 475 farm subscribers. In the 2660 calls passing between farmers the city patrons have no interest. So far as the latter are concerned, then, the plant is 66 per cent. metallic and 34 per cent. grounded.

The study here given is probably not absolutely accurate as it was made by the operators during the regular course of their duties, but it is very likely fair in so far as it shows the relation between the various classes of traffic. It is supported in that respect by a similar study made for the Illinois Public Utility Commission, *In re Mt. Carmel Telephone Company*,* Case No. 3190, Public Utilities Reports, p. 649. That study covered an exchange with 725 subscribers, 200 of which were farm and 525 city. The results were as follows:

Farm to Farm.....	523
Farm to City.....	167
City to City.....	1,946
City to Farm.....	160
<hr/>	
TOTAL CALLS	2,796

Of the calls in which the city subscribers participated this shows that but 13 per cent. were between city and farm. In this case, however, the number of city subscribers is much lower than on the Ashland exchange while the number of farm subscribers is correspondingly smaller, which influences the relation between the classes of traffic to that extent. Moreover, the test was made in January when the farm calls would be less numerous than in June. As in the study made in the instant case, however, the traffic be-

*See Commission Leaflet No. 41, p. 1191.

tween city and farm is the smallest part of the "load" handled.

The Commission realizes that if the entire plant at Ashland was metallic there would be better service than with a plant a portion of which remains grounded. However, the installation of metallic equipment was rendered imperative by conditions that exist within the city, which conditions do not obtain on the farm lines. At the same time the improvements made in the city will be reflected in a somewhat improved service on the farm lines. Eventually, it will be necessary to make the farm lines metallic, and that time may come before the expiration of the agreement referred to, in which event, the Commission would have no hesitancy in requiring the improvement to be made. It is the opinion of the Commission that service on the lines north of town extending past the electric light plant would be materially improved if the metallic and cable construction was extended to or beyond that point. This would require about one-half mile of construction. Grounded farm lines are not necessarily a bar to the making of the remainder of the plant metallic. A combination of grounded and metallic equipment is common in the State. In fact, the transition from the one to the other frequently must be gradual for reasons of economic construction. It happens that certain lines need to be reconstructed. They may be in town or in the country. It may be cheaper in the long run to make them metallic than to replace them with grounded construction and later, as the plant develops, find it necessary to again rebuild them so as to make them metallic. For that reason a large number of exchanges furnish both metallic and grounded service, and rates are quoted for both classes. As any particular class of subscribers are put upon a metallic basis, however, the grounded rates are cancelled. The situation at Ashland, therefore, is not different than at many other points in the State.

In determining, therefore, whether the failure to make the farm lines on this exchange metallic constitutes an

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undue discrimination against city subscribers we have these factors to consider:

(1) The existence of an electric light plant in the city and its operation throughout the entire day made the operation of a grounded system in the city impossible.

(2) The bulk of the traffic in which city subscribers are interested is within the city itself, and the use of the farm lines is therefore of minor concern to them.

(3) The combination of grounded and metallic plants is not uncommon and is recognized as a necessity from the standpoint of economic development.

(4) The agreement entered into between the company and the farmers is contingent upon the authority of this Commission to change it and can at any time the public service may require.

From these considerations it would appear that the continuation of grounded service on farm lines is not necessarily a bar to efficient metallic service within the city. The Commission is of the opinion that those subscribers who will be charged the new rates will receive a service that will be a great improvement over that furnished in the past and that it will be equal to the average metallic service furnished in the State.

Having arrived at the foregoing conclusion, after a careful study of the record and all the facts bearing on the situation at Ashland, it necessarily follows that the Commission is of the opinion that the applicant was justified in changing its plant from grounded to metallic equipment and that it should be permitted to cancel the rates now in effect for grounded service within the city.

ORDER.

It is, therefore, ordered, That the supplemental order* issued by the Nebraska State Railway Commission under date of August 31, 1914, suspending an order issued by this Commission under date of August 22, 1914,† be, and the same hereby is, cancelled.

*See Commission Leaflet No. 35, p. 104.

†See Commission Leaflet No. 35, p. 103.

It is further ordered, That the application of the Lincoln Telephone and Telegraph Company for authority to cancel its grounded service rates within the city of Ashland be, and the same hereby is, granted, same to become effective on and after August 1, 1915.

It is further ordered, That the Lincoln Telephone and Telegraph Company be, and the same hereby is, notified and required to reconstruct that portion of its telephone plant at Ashland which extends north from said city past the electric lighting plant, changing that portion of its lines not already metallic from grounded to metallic, the purpose being to reduce to a minimum the interference from the currents generated by said electric plant, said reconstruction to extend to and slightly beyond said plant.

Made and entered at Lincoln, Nebraska, this fifteenth day of July, 1915.

IN THE MATTER OF THE APPLICATION OF THE FARMERS TELEPHONE COMPANY OF DODGE COUNTY (SCRIBNER) FOR AUTHORITY TO PUBLISH A RATE OF \$2.65 PER MONTH FOR TWO BUSINESS FIRMS USING THE SAME 'PHONE.

Application No. 2471.

Decided July 29, 1915.

**Rate for Two Business Firms Using the Same Telephone Established —
Both Firms to be Listed in Directory.**

ORDER.

WHEREAS, the Farmers Telephone Company of Dodge County (Scribner) has made application to the Nebraska State Railway Commission for authority to publish a rate of \$2.65 per month for two business firms using the same telephone, both parties to have their names published in the directory,* the rate as above stated to apply to appli-

* A rate of \$3.00 per month for similar service was authorized in *Matter of the Application of the Pierce Telephone Exchange of Pierce for Authority to Publish Additional Rates*. Application No. 2449. Decided July 20, 1915.

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cant's exchanges at Dodge, North Bend, Scribner, Snyder and Webster:

And it appearing to the Commission, upon due investigation and consideration, that the application is reasonable and warranted by existing conditions;

It is ordered by the Nebraska State Railway Commission, That the desired authority be, and the same is hereby, granted, the rate as above authorized, applicable to the exchanges as named, to become effective from and after August 1, 1915.

Made and entered at Lincoln, Nebraska, this twenty-ninth day of July, 1915.

IN THE MATTER OF THE APPLICATION OF THE MONROE INDEPENDENT TELEPHONE COMPANY FOR AUTHORITY TO RE-ADJUST ITS EXCHANGE RATES AT MONROE, PLATTE CENTER AND TARNOV AND TO ESTABLISH A SCHEDULE OF RATES FOR METALLIC SERVICE.

Application No. 2227.

Decided July 31, 1915.

Increase in Individual Line Business Rates and Establishment of Rates for Metallic Circuit Service Authorized.

Applicant sought authority to increase its rates for individual business grounded service from \$1.00 plus the cost of necessary batteries to \$2.00, and to establish a schedule of rates for metallic service.

Applicant was furnishing service to 1,785 subscribers, providing free service with about 5,000 subscribers of other companies and had a toll connection with the Nebraska Telephone Company. With the exception of a few metallic telephones, the system was entirely grounded. The Commission considered the physical valuation of the property involved, revenues, expenses and general operation, and found that the property was in poor condition, and that the expenses would increase in the future as the extreme economy which the company had practised in the past could not be practised longer owing to the increase in the size of the plant, the desire of the subscribers for improved service, the higher standard of equipment necessary since the establishment of connection with the Nebraska company for toll service and the necessity of installing a modern system of bookkeeping.

Held: That the proposed increase in rates should be authorized.

6 Per Cent. Held to be Reasonable Allowance for Reserve for Depreciation.

Held: That assuming that the expenses for maintenance are reasonable, an allowance of 6 per cent. on the reproduction cost new should be set aside for reserve for depreciation.

7 Per Cent. Fixed as Rate of Return — Surplus to be Used for Improvement of Service.

It had been the practice of the applicant to build as many extensions as possible out of earnings. This practice had resulted in increasing the size of the property at the expense of the service.

Held: That a return of 7 per cent. on the money actually invested in the property is reasonable but that dividends should not be declared in excess of a sum equal to 7 per cent. on the actual outstanding stock;

That any surplus remaining out of earnings after the payment of 7 per cent. dividends should be applied to the improvement of the service and the maintenance of the existing property, but no new lines or additions or betterments should be financed therefrom unless approved by the Commission.

Installation of System of Accounts Ordered.

Held: That the applicant should install an accounting system which will clearly show the revenue received from all sources and the expenditures for various purposes required by the company, said expenditures to be so separated as to show the amount expended for new construction, maintenance and depreciation, direct operation and general expense:

That said system of accounts shall be submitted to the Commission for approval and be installed on or before October 1, 1915.

APPEARANCES:

For applicant, *Alfred Bratt*, president, *E. B. Dannals*, secretary, and *John B. Bratt*.

ORDER.

TAYLOR, Commissioner:

Previous to April 10, 1914, the rate for all classes of subscribers on applicant's system was \$1.00 per month plus the cost of necessary batteries. In addition there was a charge of 25 cents per month for desk telephones. On that date the Commission unanimously approved* the following

*See Commission Leaflet No. 31, p. 47.

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schedule of rates, to be made applicable only to the exchanges of Genoa and Newman Grove:

	<i>Grounded</i>	<i>Metallic</i>
Individual business	\$2 00 per month	\$2 50 per month
Two-party business		2 00 per month
Individual residence	1 00 per month	1 50 per month
Two-party residence		1 25 per month
Grounded farm line.....	1 00 per month	

It will be noticed that in addition to establishing rates for metallic service, the new schedule increased the rate for individual business grounded telephones from \$1.00 to \$2.00 per month. Applicant now asks permission to apply the above schedule to its exchanges at Platte Center, Monroe and Tarnov, and to add the following to the schedule, applicable to all exchanges in the system:

Business telephone on farm line.....	\$2 00 per month
Extension telephones	50 per month
Extension bells	25 per month

The Monroe Independent Telephone Company operates seven exchanges, those at Albion and Lindsay not being referred to above and not being included in this application. On June 30, 1914, according to its annual report filed with the Commission, it had 1,785 subscribers. These subscribers are given free service with thirteen exchanges of other companies, having a total of over 5,000 subscribers. Consequently a subscriber to applicant's service has access to over 7,000 telephones without any charge other than the monthly rental. With the exception of a very few metallic telephones installed at Genoa and Newman Grove since the rate for such service was established a year ago, the entire system is grounded. Until about a year ago the company had practically no toll connection. At about that time, however, it entered into arrangements with the Nebraska Telephone Company for connection with its toll system, and is now in a position to offer such service to all of its patrons.

If space permitted it would be interesting to review the development of this company, but it is sufficient for our purpose to say that what was once a loosely organized, crudely constructed neighborhood convenience, established on a cooperative basis for the mutual benefit of members only, has expanded into a great business enterprise covering three or four counties. Not only has its growth far exceeded the expectations of its founders but the demands for its service have become such that it is no longer a mutual enterprise, serving stockholders only. On the contrary, it has become a public utility with all the duties and obligation that the law imposes on such institutions. Its rapid and unlooked for growth and the change in the nature of the service it has been called upon to perform has compelled a readjustment of charges, an improvement of equipment and service and a more centralized and efficient management. This readjustment has been under way for a couple of years and the present application is but one of the steps in its consummation.

A hearing on this application was held in the offices of the Commission on December 21, 1914, at which time applicant submitted testimony as to the physical valuation of the property involved, revenues and expenses and general operating conditions. While the physical valuation figures were based on an actual inventory of the property, the figures showing the results of operation were fragmentary and unreliable. A valuation compiled by the Commission's engineering department was submitted. The only data with reference to earning and expenses submitted by our accounting department was a summary of the annual reports made by the company for the past seven years. The record in the case is therefore so incomplete and unreliable that it is impossible to arrive at any definite conclusions with reference to the actual results of operation. By the use of such figures as can be relied on, however, and by comparisons with other companies of like size, it is possible to reach a conclusion with reference to the rates applied for that will be approximately just and equitable.

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The increase in the grounded business rate applied for would affect 18 subscribers at Monroe, 17 at Platte Center, and 3 at Tarnov, or a total of 39. The annual increase in revenue would amount to \$468. It is proper to explain at this point that the exchange at Platte Center is owned jointly by the applicant and the Farmers Independent Telephone Company, but is operated under a contract arrangement by applicant. The application for the increase at Platte Center is joined in by the Farmers Independent Telephone Company. While there are 34 business telephones on this exchange that will be affected by the changed rate, but 17 of them are included in this statement, the revenue from the other going to the other company.

Applicant submitted at the hearing an itemized statement of expense for each of the exchanges affected. Where actual figures were available they were used, but a number of items were prorated according to subscribers' stations. The following is a summarized statement covering the three exchanges:

STATEMENT SHOWING COST OF OPERATION OF EXCHANGES AT MONROE,
PLATTE CENTER AND TARNOV.

Cost of operators (including rent, light and heat).....	\$1,254 00
Cost of troubleman (prorated — includes board and livery), 389 stations at \$2.37.....	921 93
Cost of maintenance material (estimated).....	389 00
Occupation tax (Monroe).....	5 00
Taxes (1914 Platte County taxes — prorated).....	36 18
Liability insurance (prorated).....	17 20
Expense of collection (\$4,866 at 2 per cent.).....	97 32
Cost of supervision of Messrs. Bratt and Dannals (estimated and prorated)	343 56
TOTAL	\$3,064 19

The reproduction new value of the property in the three exchanges, as found by the Commission's engineer, Mr. Forbes, was \$18,571.20. This figure, in the opinion of Mr. Forbes, is very conservative, and is over \$8,000 less than that claimed by applicant. It was made from an inventory

furnished by the company and after a personal inspection of the property by our engineers. Following its compilation it was found that certain items of equipment had been omitted, but the figures were allowed to stand without change.

Assuming that the expenditures for maintenance, as shown above, are normal — and as they average but a trifle over \$3.00 per station, the assumption is reasonable — an allowance of 6 per cent. on the reproduction value for depreciation appears necessary, particularly in view of the fact that the value as found is conservative. This would produce \$1,114.27 annually, which, added to the total operating expense, as shown above, results in a total charge against revenue of \$4,178.46. The present revenue from the three exchanges is \$4,866. Thus a balance of \$687.54 is left for dividends on the stock outstanding. Prorating the capital stock on the basis of the subscribers' stations, we have \$10,366 as the apportionment for these exchanges, which, at 7 per cent., should earn \$725.62. It is apparent, therefore, that on this basis the present rates are not compensatory. And there is every reason to believe that the figures used come short of reflecting actual conditions. President Bratt testified that it is not the practice of the officers of the company to make any charge against the company for traveling expenses. He also testified that he owns two automobiles that are devoted entirely to the service of the company, for which no charge is made. The members of the board of directors, of whom there are seven, receive no compensation. It will be noted, moreover, that no allowance is made in the figures shown for uncollectible accounts, fire insurance, legal expense, stationery and printing, bookkeeping and other general items of expense that are common to every company and must certainly be present in the one under consideration, although not accounted for in these figures. As a matter of fact, the record is clear that the management has always exercised extreme economy in the operation of the system, and that the policy prevails of attempting to conduct it on a "cost" basis.

Expenses in the future will increase. The system has reached the point where it can no longer be operated on the present basis. The demand for improved service and up-to-date equipment is already pressing, as is indicated by service complaints registered with the Commission in recent months. Connection with the toll systems of the Nebraska Telephone Company requires a higher standard of equipment and service than was necessary when only local service was rendered. If the company is to install and keep a modern system of bookkeeping,—and the Commission is of the opinion that it should,—another substantial item of expense will be added that is not now provided for. In view, therefore, of the present state of the company's finances and of the new conditions now to be met, it is clear that the slight increase asked for is justified. Moreover, the uniform rate to all classes of subscribers is contrary to the general practice and a higher rate to business subscribers is justified by custom and by the experience of practically all other companies. It was largely on the ground of bringing the rates of this company in line with the standard practice in this State that the Commission unanimously approved an increased business rate for the Genoa and Newman Grove exchanges a year ago. The approval of this application will still further standardize the rates on applicant's system.

The poor condition this property is in at the present time and the improvements that must be made in the service, make it imperative that the management shall put into the property every available dollar over and above a reasonable return on the actual investment. It has been the practice in the past to build as many extensions as possible out of the earnings. This has had the effect of increasing the size of the property at the expense of the service and of the proper maintenance of the property already in existence. In other words, more plant has been built than can be maintained on the present earnings. The time has come when this practice must cease. Additions and betterments must be provided for hereafter out of new capital secured

through the sale of stock. A return of 7 per cent. on the money actually invested by the stockholders the Commission regards as reasonable, particularly, as in this case, where the stockholders have made sacrifices in the form of labor and services in excess of their cash investment. In view of the condition of the property, however, the Commission is of the opinion and so finds that the return should be limited to 7 per cent. and that the surplus, should there be any, should be devoted to the maintenance of the existing property and the betterment of the service. None of the earnings should be expended for new property in the form of additions and extensions.

It is not the purpose of applicant to install metallic service at the present time, but an application is made for a schedule of rates covering such service so that it can be furnished if demanded. An additional investment will be required in every instance where metallic service is installed, and if any considerable number of subscribers demand it, the entire system will have to be reconstructed. The schedule asked for is the average for such service in the State. The fact, considering the size of the system and the number of subscribers served and the connection with the large number of other exchanges, for which no added charge is made, it is somewhat lower. Under these circumstances the Commission regards it as reasonable and it will be approved.

ORDER.

It is, therefore, ordered, That the Monroe Independent Telephone Company be, and the same hereby is, authorized to charge and collect, until the further order of this Commission, the following schedule of rates, applicable to its exchanges at Monroe, Platte Center, and Tarnov, same to become effective September 1, 1915:

Individual business, grounded circuit.....	\$2 00 per month
Individual residence, grounded circuit.....	1 00 per month
Farm line, grounded circuit.....	1 00 per month

These rates to be in addition to the cost of batteries.

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It is further ordered, That the Monroe Independent Telephone Company be, and the same hereby is, authorized to charge and collect the following schedule of rates, applicable to all the exchanges on its system, same to become effective September 1, 1915:

Individual business, metallic circuit.....	\$2 50 per month
Two-party business, metallic circuit.....	2 00 per month
Individual residence, metallic circuit.....	1 50 per month
Two-party residence, metallic circuit.....	1 25 per month
Business telephone on farm line, grounded circuit....	2 00 per month
Extension telephones	50 per month
Extension bells	25 per month

It is further ordered, That the Monroe Independent Telephone Company be, and the same hereby is, notified and required to install a system of accounting that will clearly show the revenue received from all sources and its expenditures for the various purposes required by the company, said expenditures to be so separated as to show the amounts expended for new construction, maintenance and depreciation, direct operation and general expense. Said system of accounts to be submitted to this Commission for approval, and to be installed on or before October 1, 1915.

It is further ordered, That until the further order of this Commission, the annual dividends to be declared and paid by the said Monroe Independent Telephone Company shall not exceed a sum equal to 7 per cent. on the actual, outstanding capital stock.

It is further ordered, That any surplus remaining out of the earnings after all operating, maintenance and depreciation expenses, and a dividend equal to 7 per cent. on the outstanding capital stock, have been paid, shall be applied to the improvement of the service and the maintenance of the existing property, and, unless the approval of this Commission is first secured, none of such surplus shall be expended for the building of new lines or for any additions and betterments.

Made and entered at Lincoln, Nebraska, this thirty-first day of July, 1915.

IN THE MATTER OF THE APPLICATION OF THE LINCOLN TELEPHONE AND TELEGRAPH COMPANY FOR AUTHORITY TO DISCONTINUE ITS TOLL STATION AT CADAMS.

Application No. 2481.

Decided August 11, 1915.

Discontinuance of Toll Station Authorized.*

EXCERPT FROM MINUTES.

“ Under date of August 11, 1915, the Lincoln Telephone and Telegraph Company made request for authority to discontinue its toll station at Cadams, for the reason that it is about to establish a party-line service in that village and the toll station is therefore no longer a necessity. The request was granted, subject to complaint, and it was directed that the applicant be notified by letter of the action taken; and it was further directed that the toll rates to Cadams be listed in applicant's toll rate book, ‘ Same as Superior ’.”

W. J. SCOUTT AND EDWIN D. GOULD, FOR THEMSELVES AND OTHERS SIMILARLY SITUATED, *v.* NEBRASKA TELEPHONE COMPANY AND KEARNEY TELEPHONE COMPANY.

Formal Complaint No. 274.

Decided August 11, 1915.

Consolidation of Competing Exchanges Ordered.

Complainants sought an order requiring the respondents, who were operating competing telephone exchanges in Kearney, to consolidate and thereby remove the expense and inconvenience arising from the duplication of telephone facilities.

The Nebraska Telephone Company was willing to purchase the Kearney Telephone Company if permitted to do so and if said purchase was not illegal under the anti-trust laws of the United States or in violation of a

*Upon application of the Lincoln Telephone and Telegraph Company, authority was granted to discontinue the following toll stations:

Smyrna. Application No. 2464. July 27, 1915.

Mynard. Application No. 2482. August 18, 1915.

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certain commitment entered into with the federal authorities through the American Telephone and Telegraph Company whereby this company agreed to purchase the property of no telephone company where such telephone company was a competitor.

The respondent Nebraska Telephone Company was unwilling to sell its telephone exchange at Kearney since in connection with the operation of its toll lines it was necessary for it to maintain at Kearney a toll switchboard, operators and maintenance crews.

The Kearney Telephone Company was willing to sell its property to the Nebraska company but would not be able to finance the purchase of the Nebraska company even if the latter were willing to sell. If a consolidation was to be effected the present seemed to be the most opportune time inasmuch as the Kearney company had contemplated, and was preparing in event that consolidation was not effected, to put in an entirely new switchboard in the central office, to change from a magneto to a common battery system and to make considerable extension involving more or less cable installation.

Held: That in view of the inability of the Kearney Telephone Company to finance the purchase of the Nebraska Telephone Company's property and the unwillingness of the Nebraska company to sell its property because of the necessity of maintaining in Kearney operators and maintenance crews for its long distance lines and the further fact that the Nebraska company was the first to locate in Kearney, the only logical solution of the question is the purchase of the Kearney Telephone Company by the Nebraska Telephone Company;

That should the federal authorities feel that said consolidation was in violation of the anti-trust law or the commitment entered into by the Nebraska company through the American Telephone and Telegraph Company whereby the Nebraska company agreed to purchase the property of no telephone company where such telephone company was a competitor, and should they effect the retention and continuance of the burden of duplicated telephone facilities in Kearney, the responsibility must be theirs;

That the Nebraska Telephone Company and the Kearney Telephone Company should be required to consolidate their respective exchanges in the city of Kearney, that failing any other method of consummating the same, the Nebraska Telephone Company should be required to purchase the property of the Kearney Telephone Company, the terms of said purchase and sale to be approved by the Commission.

APPEARANCES:

For complainants, *John M. Dryden* and *H. M. Sinclair*;

For Nebraska Telephone Company, *Edgar M. Morsman, Jr.*;

For Kearney Telephone Company, *Warren Pratt*.

ORDER.

CLARKE, *Chairman*:

The citizens of the city of Kearney are supplied with a duplicate telephone service by the Kearney Telephone Company, having some 1,450 subscribers at Kearney, 212 of which are farm lines for which they do the switching, and the Nebraska Telephone Company, having about 800 subscribers. There is a duplication of approximately 250 'phones in the entire city exchange.

In addition to the above, the Kearney Telephone Company operates exchanges at Overton, Riverdale and Sumner, and toll lines extending west to Overton, Lexington and across to Sumner, and from Kearney to Callaway through Amherst and Miller, together with a considerable number of farm lines at Overton and Sumner.

The Nebraska Telephone Company owns and operates practically all of the toll lines south of the Platte, west of Adams and Webster counties, and likewise practically all of the long distance lines with the exception of a few lines, in the North Platte territory.

The complainants herein, citizens of Kearney and patrons of the two companies, for and on behalf of themselves and others similarly situated, complain of the expense and inconvenience arising from the duplication of telephone systems, and ask that the said companies be required to consolidate.

The Nebraska Telephone Company in its answer admits that two telephone exchanges in the same place are an unnecessary burden upon the inhabitants thereof; that it is willing to purchase and acquire the Kearney Telephone Company at a fair figure, if permitted so to do, and if such purchase is not illegal under the anti-trust laws of the United States and in violation of a certain commitment entered into with the federal authorities through the American Telephone and Telegraph Company, whereby this company agreed to purchase the property of no telephone company where such telephone company is in competition with respondent, and that in view of said agree-

ment it cannot purchase the property of the Kearney Telephone Company unless respondent is assured that such purchase will not be considered as constituting a violation of said agreement made by the American Telephone and Telegraph Company with the federal authorities.

Respondent further alleged that, in addition to the local exchange at Kearney, it owns and operates other telephone exchanges located in all the important towns of Nebraska and South Dakota; that it has invested large sums of money in long distance and toll telephone lines, which connect all the exchanges operated by respondent, and likewise many other exchanges located in towns where respondent has no exchange, and that by means of said long distance and toll lines respondent is able to furnish to the city of Kearney and the State of Nebraska telephone service to practically every town in the United States.

Respondent further alleges that in connection with its telephone exchange located at Kearney it operates and maintains a toll switching station and toll switchboard, and to properly operate its toll and long distance lines it must at all times maintain in said city of Kearney a toll switchboard and a large force of operators and men sufficient to properly take care of its toll and long distance lines which pass through and radiate from Kearney.

Respondent, the Kearney Telephone Company, by way of answer, likewise admits the burdensome nature of a duplicate telephone system and alleges that it is willing to sell and dispose of its said exchange and system to the Nebraska Telephone Company for a fair price, and that the said defendants can agree, if permitted, upon a price therefor. It further alleges that it is unable itself to finance the purchase of the local exchange of the Nebraska Telephone Company, even if said company were disposed to sell the same, and that in order to comply with the complaint it will be necessary for it to sell its property and system to the said Nebraska Telephone Company, and that its stockholders and board of directors have authorized the board of directors to sell and dispose of same to the Nebraska Telephone Company.

Upon proper notice given, a hearing was had in the city of Kearney on June 4. It appears from the evidence that there has been and is an almost universal demand from the citizens of Kearney for the proposed consolidation. A large petition demanding same was introduced in evidence. Likewise, resolutions of the Commercial Club and city council of Kearney, recommending and demanding same. That the matter had received full consideration by the patrons of the company and the citizens of Kearney, is evidenced by the minutes of three meetings held by the Kearney Commercial Club, and the files of the various papers published in Kearney, introduced in the record. A considerable number of the most prominent citizens of the city, including the judge of the district court, none of whom had any financial interest in either company, testified that in their opinion the demand was almost universal, if not unanimous. The only remonstrance received by the Commission in regard to the proposed consolidation was filed by one of the officers of the Union Valley Telephone Company, a farm line switched by the Kearney Telephone Company. This party failed to appear at the hearing, but the secretary and manager of his company did appear and testified that in his opinion it would be more convenient and a benefit to the city and country.

In addition to the added expense, the usual annoyances and inconveniences incident to a duplication of telephone exchanges in the same town exist in the usual, if not in an aggravated, form at Kearney, and it is unnecessary to cite them in detail. In addition thereto, is the added expense which said duplication places upon the local electric light plant and the added risk in which the citizens of Kearney are placed by reason of the greater possibility of a short circuit occurring in the distribution system of respondents with the high voltage transmission lines of said electric light company.

It further appears from the evidence that if a consolidation is to be effected, now or in the future, that the present is most opportune, inasmuch as the Kearney Telephone

Company had contemplated, and is preparing in the event that consolidation is not effected, to put in an entirely new switchboard in the central office, to change from magneto to common battery, and to make considerable extension involving more or less cable installation.

The evidence also shows that the gross earnings of the Kearney Telephone Company for the calendar year 1913 from interstate toll business, including commissions on business originated by it, amounted to \$2.82 or .07 of one per cent. of its entire net toll business; that of the \$2.82 interstate toll earnings, but 6 cents, or 2 per cent. thereof, was earned through independent toll line connections. The remainder thereof, viz., \$2.76, or 98 per cent., was earned through Nebraska Telephone Company connections. That the gross earnings of the said company for 1914 from interstate toll business, including commission on business originated by it, amounted to \$1.74, or, .05 of one per cent. of its entire net toll earnings; that of the \$1.74 interstate toll earnings, 87 cents was earned through independent toll connections, and the remainder thereof, or 87 cents, was earned through Bell connections. It would therefore appear that the interstate business of the Kearney Telephone Company is so insignificant as not to merit consideration when one considers the added expense and great annoyance and inconvenience to which the patrons of the two companies at Kearney are subjected.

In view of the inability of the Kearney Telephone Company to finance the purchase of the Nebraska Telephone property, and the unwillingness of the latter to sell its property by reason of the necessity of maintaining in Kearney operators and maintenance crews for its long distance lines, and the further fact that the latter company was the first to locate in Kearney, it would appear that the only logical solution of the question is the purchase of the Kearney Telephone Company by the Nebraska Telephone Company.

The section of the agreement entered into between the

American Telephone and Telegraph Company with the federal authorities, is as follows:

"Neither the American Telephone and Telegraph Company nor any other company in the Bell system will hereafter acquire, directly, through purchase of its physical property or of its securities or otherwise, dominion or control over any other telephone company owning, controlling, or operating any exchange or line which is or may be operated in competition with any exchange or line included in the Bell system, or which constitutes or may constitute a link or portion of any system so operated or which may be so operated in competition with any exchange or line included in the Bell system."

Provided, however, that where control of the properties or securities of any other telephone company heretofore has been acquired and is now held by or in the interest of any company in the Bell system and no physical union or consolidation has been effected, or where binding obligations for the acquisition of the properties or securities of any other telephone company heretofore have been entered into by or in the interest of any company in the Bell system and no physical union or consolidation has been effected, the question as to the course to be pursued in such cases will be submitted to your Department and to the Interstate Commerce Commission for such advice and directions, if any, as either may think proper to give, due regard being had to public convenience and to the rulings of the local tribunals."

The above agreement, in the absence of any power in the State, is, (unless the clause in the last paragraph, "due regard being had to public convenience and to the rulings of the local tribunals," relates back to the first paragraph), binding on the Nebraska Telephone Company, at least to the extent of any voluntary action on their part.

The purpose, as we construe it, of the anti-trust laws of the nation and states is for the purpose of protecting the people from extortions and burdens incident to an oppressive monopoly.

Certainly, where each jurisdiction is clothed with full and complete power of regulation, ample protection is afforded if the regulatory powers are fairly and properly administered. To hold otherwise would admit the inherent weakness of the regulatory powers of the state and nation. and the very laws designed to protect the people from inconvenience and unnecessary burdens would be the means of their continuance.

We have no quarrel with the federal authorities in the performance of their duties and the exercise of their powers. Should they in their judgment deem the purchase of the Kearney Telephone Company's property prejudicial to the general public welfare and in the administration of their powers thereby effect the retention and continuance of the duplicated telephone burden in Kearney and its surrounding territory, the responsibility must be theirs.

We concede that where the welfare of the nation as a whole requires the rigid administration of general federal laws, even though it work an unnecessary hardship on the few, such laws should unhesitatingly be rigidly enforced.

We cannot, however, with all due deference to the Federal Department of Justice, concede that the case at hand comes within that class of legislation and that complainants are not entitled to the relief prayed for.

This Commission has consistently and continually encouraged the elimination of duplicated telephone service, and the fact that during the past four years the Nebraska Telephone Company has exchanged and sold approximately 20,000 subscriber stations to competitors, as against approximately 6,000 acquired, is entitled to considerable weight in the present case.

We therefore find that the Kearney Telephone Company and the Nebraska Telephone Company should be required to consolidate their respective exchanges in the city of Kearney; that failing any other method of consummating same, the Nebraska Telephone Company should be required to purchase the property of the Kearney Telephone Company, the terms of said purchase and sale to be approved by this Commission.

ORDER.

It is, therefore, ordered, That the Nebraska Telephone Company and the Kearney Telephone Company be, and the same are hereby, notified and directed to consolidate their respective exchanges in the city of Kearney.

It is further ordered, That the Nebraska Telephone Company, in the event no other method of consolidation is

practical, be authorized and directed to acquire the property of the Kearney Telephone Company.

It is further ordered, That the plan or method of consolidation agreed upon by the said parties, and, in the event of purchase, the terms of sale, be submitted to this Commission within forty days from date hereof for its approval.

Made and entered at Lincoln, Nebraska, this eleventh day of August, A. D., 1915.

IN THE MATTER OF THE APPLICATION OF THE CROWNOVER TELEPHONE COMPANY FOR AUTHORITY TO INCREASE ITS RATES FOR ITS EXCHANGE AT SARGENT.

Application No. 2153.

Decided August 12, 1915.

Increase in Rates Denied — Allowance of 9 Per Cent. on Reproduction Cost for Maintenance and Reserve for Depreciation Made in Computing Expenses — 7 Per Cent. of Present Value Held Reasonable Rate of Return.

Applicant sought authority to increase its rates for business, residence and farm line service.

The Commission considered the value of the property and determined that the reproduction cost new was \$25,832.98 and the fair present value was \$20,531.12.

The Commission then considered operating expenses and revenues. Owing to the length of the farm lines, made necessary on account of the topography of the country and scarcity of population, the Commission in computing expenses allowed 9 per cent. of the cost of reproduction new for maintenance and reserve for depreciation, this allowance being somewhat above the normal usually fixed by the Commission. A rate of return of 7 per cent. of the present value was allowed.

Held: That, considering the expenses of 1914 as representative of present conditions and allowing 9 per cent. for maintenance and depreciation and 7 per cent. for dividends, the showing was not such as to justify the Commission in granting the application.

Allocation of Expenses and Earnings of Exchange and Toll Services Recommended.

The company did a large toll business, over 30 per cent. of its gross revenues being derived from this source.

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Held: That before the status of either the exchange or toll systems could be determined, a separation of the properties and a segregation of the earnings and expenses would be necessary;

That the two classes of service should be kept separate, so far as accounting is concerned, so that it would be possible to determine what the rates for each class should be;

That until this is done, the Commission cannot establish a schedule of rates for exchange service that will be equitable.

Improvement in Service Recommended.

Held: That the applicant should make an effort to reduce the number of subscribers per line, and should make a careful study of its traffic to determine whether it has sufficient operators to handle both the toll and exchange business. The toll business should not be allowed to become a burden to the exchange, and if it is found that it is, sufficient operators should be employed so that all traffic can be handled promptly and efficiently;

That if the farm lines owned by the farmer line companies were reconstructed so as to reduce the number of subscribers on each circuit, and if suitable instruments of the same type were installed, and more attention were given to the maintenance of the property, much of the trouble at present experienced would be remedied.

APPEARANCES:

For applicant, *A. S. Moon;*

For remonstrators, *J. R. Dean.*

TAYLOR, Commissioner:

Applicant operates a telephone system, the headquarters and principal place of business being at Sargent. It operates 318 subscriber's stations of its own and in addition switches approximately 160 farm subscribers who own their own lines. The entire plant is grounded with the exception of certain toll lines, which are metallic.

The rates in effect at the present time are as follows:

Business	\$1 75 per month
Individual residence	1 50 per month
Party residence	1 25 per month
Farm line	1 25 per month
Switching farm lines	25 per month

A discount of 25 cents per month is allowed if rental is paid within 30 days after it is due. This does not apply to the switching rate.

It is desired by applicant to increase these rates as follows:

Business	\$2 25 per month
Individual residence	1 75 per month
Party residence	1 50 per month
Farm line	1 50 per month

The discount of 25 cents to apply as at present.

In support of its application the company submits a statement covering its operation from 1907 to the present. This has been analyzed by our accounting department and is supplemented by a study made of the annual reports filed with the Commission since 1908. The engineer of the Commission made a physical valuation of the property, which is a part of the record. The following is a summary of the earnings and expenses of the company from 1908 to 1914:

EARNINGS

Year	Rents	Switching	Toll	Pole rent	Total
1908	\$1,898 21	\$402 80	\$640 34	\$8 35	\$2,949 70
1909	3,716 10	535 00	747 00	10 65	5,008 75
1910	3,863 00	544 95	852 15	9 65	5,269 75
1911	4,230 00	504 25	1,062 45	12 50	5,809 20
1912	4,270 25	527 30	1,540 02	12 05	6,349 62
1913	4,261 15	514 70	2,075 45	20 40	6,871 70
1914	4,288 55	481 04	2,269 78	37 70	7,077 07
TOTAL	<u>\$26,527 26</u>	<u>\$3,510 04</u>	<u>\$9,187 19</u>	<u>\$111 30</u>	<u>\$39,335 79</u>

EXPENSES

Maintenance	Operating	General	Toll clearance	New Construction	Dividends	Total
\$616 73	\$538 50	\$905 45	\$9 83	\$323 34	\$388 00	\$2,781 85
1,308 39	670 23	1,117 95	64 23	1,248 27	650 33	4,959 40
1,050 07	855 48	1,097 53	92 81	1,884 74	560 00	5,520 63
1,103 84	1,082 71	1,454 33	39 98	1,312 81	460 00	5,453 67
1,091 57	1,017 22	1,293 05	317 29	201 70	2,048 00	5,968 83
1,103 59	946 20	1,240 14	697 86	72 61	2,048 00	6,110 40
1,244 98	1,204 85	1,874 13	679 87	1,402 73	2,048 00	8,454 56
<u>\$7,519 17</u>	<u>\$6,315 19</u>	<u>\$8,982 58</u>	<u>\$1,901 87</u>	<u>\$6,446 20</u>	<u>\$8,202 33</u>	<u>\$39,249 34</u>

While, on the face of the figures thus presented, the showing is quite favorable to the company, it is necessary to subject them to some analysis before their conclusions can

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be accepted. For instance, dividends have been declared and paid on capital stock, a portion of which does not represent an actual cash investment. Applicant purchased this plant from the Central Telephone Company in 1907, paying therefor \$10,700. According to the testimony of President Grint the property was secured at a very low figure, his estimate being that it was worth about twice the amount paid for it. At the time the property was purchased stock was issued to the amount of the purchase price. Shortly thereafter the capital was increased to \$11,500, the additional issue being made to cover the purchase of a small farm company and for small extensions made to the plant. In 1909 the stockholders concluded that they should have some evidence of ownership for the property secured in excess of the original purchase price and for some improvements that had been made. Accordingly they authorized an issue of \$11,500, thus doubling the capital stock. This stock was distributed in the form of a dividend. In the absence of the records showing the value of the original property, it is impossible for the Commission to determine just what value should be placed on this stock, but it is clear that the purchase price should not be accepted as the sole measure of its value. While the price for which a property is sold is an element to be considered in ascertaining its value for rate making purposes it is too unreliable to be accepted as conclusive. The price may be too high as well as too low. Lacking the necessary information, therefore, the Commission is compelled to look for some other basis that will be fair and equitable. In this instance it seems fair to adopt the present value of the physical property as found by the department's engineer, which is \$20,531.12.

The manner in which the present company came into possession of the original property makes it necessary to reject the book figures for the property investment as a basis for ascertaining the necessary allowance for maintenance and depreciation. The property investment account was started with the purchase price of \$10,000. Whatever

property there was in excess of that amount, therefore, should be taken into consideration in arriving at the amount required for maintenance, for it has to be repaired and replaced along with the remainder of the plant of which it is a part. In the absence of information as to the amount of it, however, we are again forced to adopt a method that will take it into consideration. This we have in the physical valuation as returned by the engineer. The reproduction value should represent the cost of all the property in use and this we find to be \$25,832.98.

Owing to the unusual length of the farm lines in this plant the allowance for maintenance and depreciation should be somewhat above the normal. The topography of the country and the scarcity of population make necessary the construction of long farm lines. The record shows that one of the farm lines on this system is 28 miles in length, which is much longer than economical maintenance and good operation warrant. The average for all the farm lines is above twelve miles. The average in the eastern part of the State where conditions are more favorable is from 6 to 10 miles. It needs no argument to demonstrate that such a condition calls for a larger expenditure for maintenance. The Commission has found from 8 per cent. to 9 per cent. on the reproduction value of the property to be a reasonable allowance for the purposes of maintenance and depreciation and in view of the abnormal condition existing here finds that 9 per cent. on the reproduction value is necessary and reasonable in this case.

Using the figures of 1914, because they are representative of present conditions, and readjusting them to the basis outlined in the foregoing, we find that the results are still favorable to the company.

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EARNINGS.

Rentals	\$4,288 55	
Switching	481 04	
Toll	2,269 78	
Pole rental	37 70	
		<hr/>
TOTAL		\$7,077 07

EXPENSES.

Operating	\$1,204 85	
General	1,069 60	
Maintenance and depreciation (9% on \$25,832.98)	2,324 96	
		<hr/>
TOTAL		4,599 41
		<hr/>
Operating income		\$2,477 66
Deductions:		
Toll clearance	\$679 85	
Taxes	256 26	
		<hr/>
TOTAL		936 11
		<hr/>
		\$1,541 55
Dividends (7% on \$20,531.12)		1,437 17
		<hr/>
Net surplus		\$104 38

The allowance for dividends in the calculation is somewhat less than the company has been in the practice of paying, but the Commission has found 7 per cent. to be a reasonable rate under ordinary conditions, and there appear to be no special reasons in this case why the allowance should be increased.

Two features of the company's operations tend to cast doubt on the fairness of the above showing, viz.: the amount of the toll revenue and the standard of service now being rendered. The toll business handled by this company is much larger than is usually handled by a company operating a similar number of subscribers' stations. The toll revenue is over 30 per cent. of the total gross revenue, whereas in the average company it will not exceed 10 per cent. The unusually large revenue from this source is

explained by the fact that Sargent is the terminus of a branch of the Burlington railroad and is thus the center of a very large trade territory. Long farm lines, many of them owned by the farmers, radiate to the north and west, and by means of "knife" switches connect with other lines of a similar character, so that the applicant company affords the only outlet for a wide territory. The company owns 88 miles of toll line, 58 miles of which is metallic. Before the status of either the exchange or the toll system could be determined, therefore, it would be necessary to have a separation of the properties and a segregation of the earnings and expenses. It is very probable that the large toll revenue accruing to the company is responsible for its good financial showing, and that if the exchange was set apart it would show a deficit instead of a surplus. Without such a separation, however, it is impossible to determine just what the exchange rates should be. The Commission is of the opinion that the two classes of service should be kept separate, so far as the accounting is concerned, so that it would be possible to determine what the rates for each class should be. Until that is done in this case, at least, the Commission cannot establish a scale of rates for exchange service that will be equitable. Applicant should at once make the necessary changes in its accounts that they may show the value of the toll property and the cost of that part of the business.

A large amount of testimony was introduced with respect to the service being rendered by applicant, most of it being in the nature of complaints. The principal trouble appears to be that subscribers cannot get the central office promptly, and in some instances cannot attract "central" at all, it being necessary to have a subscriber closer to the office ring in and thus open the line. Practically all of the complaints came from farmers, the few business men who testified complaining only of their inability to get out on the farm lines because they are always "busy". This condition with respect to the farm lines is to be expected on account of their abnormal length and to the large number

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of subscribers to the line. It is likely, also, that the large amount of toll business handled, much of it under very adverse conditions from an operating standpoint, occupies the time of the operators to such an extent that they cannot give as much time to local calls as they should. This situation is indicated by the testimony of manager Crownover, who, in answer to a question, said:

"The drop may work in perfect order and we may be repeating a long distance call and we see the drop come down, but we can't answer right away, and by the time we get ready so that we can answer, they are gone."

A large number who criticized the service were farmers located on switched lines. They assumed that all of the troubles originated at the switchboard and that applicant is responsible for them. It is apparent, however, that where farm lines twenty miles in length and having as high as sixteen subscribers encounter difficulty in getting good service, the trouble lies, not alone in the central office, but in the condition of the lines themselves. There is no uniformity in the type of telephone instruments used on these lines, the selection being left to the subscriber, and as a consequence the lines are unbalanced and proper service is impossible. It is altogether probable that if these lines were reconstructed so as to reduce the number of subscribers to each circuit, suitable instruments of the same type installed and more attention given to the maintenance of the property a large portion of the troubles now complained of would disappear. These are matters, however, for the farm companies themselves to attend to and applicant cannot be held responsible if such improvements are not made.

Under present conditions it would seem impossible for the company to reduce the length of its own farm lines, but the Commission believes it should make an effort to reduce the number of subscribers to the line. It should also make a careful study of its traffic to determine whether it has sufficient operators to handle both the toll and exchange business. The toll business should not be allowed to be-

come a burden to the exchange and if it is found that it is, sufficient operators should be employed so that all traffic can be handled promptly and efficiently.

The Commission realizes that if the recommendations made herein are followed the company will be put to considerable expense. It is probable, also, that if the books are readjusted so as to separate the toll and exchange operations the showing may call for a readjustment of the rates. Be that as it may, the changes suggested should be made. After a trial under the new conditions another inquiry can be had and the rates readjusted, if that is found to be necessary. It is clear from the showing made at this time, however, that the application should be denied.

It is therefore ordered, That the application herein be, and the same hereby is denied.

Made and entered at Lincoln, Nebraska, this twelfth day of August, 1915.

IN THE MATTER OF THE APPLICATION OF THE LINCOLN TELEPHONE AND TELEGRAPH COMPANY FOR AUTHORITY TO REVISE ITS RATES IN CONNECTION WITH ITS FRIEND EXCHANGE.

Application No. 2268.

Decided August 18, 1915.

Increase in Rates upon Consolidation of Competing Exchanges and Improvements of Service Authorized.

Upon the consolidation of two formerly competing exchanges, applicant sought authority to establish new schedules of rates for metallic and grounded circuits service.

Applicant had acquired the properties of the Saline County Telephone Company and the Nebraska Telephone Company, both of which had been operating exchanges in Friend. The two exchanges had been consolidated, a common battery switchboard installed, certain lines removed from the main streets at the request of the city, and the city exchange rebuilt. Several of the farm lines had an excessive number of subscribers per line, and the reconstruction of these farm lines and the furnishing of additional lines were necessary.

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The Commission determined that the cost of reproduction new of the property was \$45,594.90 and the present value, after making a fair allowance for working capital and the expense necessarily involved in readjusting and adding to the farm lines, was \$40,000.

The Commission then considered the present operating expenses and the revenues under the present and proposed schedule of rates, and found that the present revenues were inadequate, and that the proposed rates were reasonable. The proposed schedule corresponded with and was similar to schedules previously authorized by the Commission for exchanges of similar size, character and standard of maintenance.

7 Per Cent. Held Reasonable Rate of Return.

Held: That 7 per cent. of the fair present value is a reasonable rate of return.

8 Per Cent. Held Reasonable Allowance for Maintenance and Reserve for Depreciation.

Held: That an allowance of 8 per cent. of the reproduction cost for maintenance and reserve for depreciation is reasonable.

Readjustment of Farm Lines Ordered — Number of Subscribers Per Line Limited.

Held: That the applicant should as soon as possible readjust and reconstruct its farm lines in such manner that not more than ten subscribers shall be served on any line;

That the present farm line rates should apply on each and every line having more than ten subscribers thereon until such readjustment shall be made.

APPEARANCES:

For applicant, *L. E. Hurtz.*

For remonstrators, *Alex McFarland, Charles F. Barth, Earl Sims, J. E. Whitcomb and C. E. Bowlby.*

ORDER.

CLARKE, Chairman:

The applicant herein petitions for authority to publish and charge the following schedule of rates in and for its Friend exchange:

Individual business	\$30 00
Individual residence	18 00
Two-party residence	15 00
Farm residence	18 00
Inner radius is city limits.	

Additional charge outside of inner radius where there is an existing pole line, for each quarter mile or fraction thereof:

One-party	\$5 00
Two-party	3 00
Extra service (two parties using same telephone), business.....	1 00
Extension sets	1 00
Extension bells	25

Telephone service was formerly furnished the citizens of Friend by the Saline County Telephone Company and the Nebraska Telephone Company. The properties of both of said companies had been acquired by the applicant at a cost of \$30,309.52 and \$1,410, respectively, for the Friend exchanges of the above companies.

The two exchanges have been consolidated, a common battery switchboard installed, certain lines removed from the main streets at the request of the city, the city exchange rebuilt.

Since the purchase of the said exchanges, applicant has added \$18,788 of new property, and removed property aggregating \$8,408.98, leaving a net investment in the exchange property of \$42,098.54.

The engineering department of the Commission made a valuation of the physical property involved in this application and reports the following: reproduction new value, \$45,594.90, and a present value or reproduction new value, less depreciation, of \$38,028.14. Applicant claims a replacement value of \$56,000 and a present value of \$42,000.

Out of twenty-seven farm lines connected to the Friend exchange, fifteen of said lines have from eleven to eighteen subscribers on a line. This condition is not consistent with proper service. Applicant should reconstruct its lines and furnish added lines, limiting the number of subscribers to a line to ten.

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When proper allowance is made for working capital and the expense involved in readjusting and adding to the farm lines, a present value of \$40,000, on which to base earning, is conservative and is adopted for the purposes of this case. The engineer's finding of \$45,594.90 reproduction new is accepted and adopted as a basis of determining the proper maintenance and depreciation costs and allowances.

Applicant presented a detailed statement of its operating expenses properly chargeable to the exchange, and its revenues under the present rates from April 1, 1914, to April 1, 1915, including proper credits or commissions on toll business handled at Friend. No expenditures properly chargeable to capital or plant account for additions and betterments are included.

A summary of the said statements discloses the following:

Revenue	\$8,933 15
Expenses, not including interest or depreciation.....	6,244 15
<hr/>	
Net income applicable to interest and depreciation.....	\$2,689 00

The Commission has found in previous cases that an allowance from 8 to 9 per cent. of the reproduction value of telephone properties of this character should be made to cover maintenance and depreciation.

Applying 8 per cent., which we adopt for the purposes of this case, and which, considering the standard of maintenance kept by the applicant, is conservative, an allowance of \$3,675.39 (8 per cent. on \$45,594.90) is found.

In the above item of expenses of \$6,244.15 is included the cost of current repairs of \$925.18. To find the net operating expense of applicant, exclusive of maintenance and depreciation allowance, this item should be deducted, and leaves a direct operating cost, exclusive of said items, of \$5,218.97.

Recast, the statement of earnings and expenses is as follows:

Earnings	\$8,933 15	
Expenses, exclusive of maintenance and depreciation	5,218 97	
		\$3,714 18
Maintenance and depreciation charges.....		3,675 39
		<hr/>
Available for dividends.....		\$38 79

It appears that the applicant in its exhibits has, in determining the proportion of its general office expenses, including general officers' salaries, apportioned same among its various exchanges according to the number of subscribers' stations in each exchange.

Inasmuch as the toll property of the applicant is 26.11 per cent. of its entire plant and its toll revenues 28.9 per cent. of its total revenue, it is argued by remonstrators that where such expenses cannot be directly allocated as between the exchange and toll property they should be apportioned on some reasonable basis, either plant investment or revenues, between the two. The applicant insists that the 25 per cent. commission credited the Friend exchange on toll business originating should include and cover the items of general expense properly chargeable to toll.

The question, however, is not vital to the issues in this case, as the total items of general expense in controversy aggregate approximately only \$860. Using the basis most favorable to the exchange, to-wit, the revenue basis of apportionment as between applicant's exchange and toll properties, there would be deducted from the expense charged in the foregoing items 28.9 per cent. of \$860, or \$248.54, and its net income increased by a like amount.

It is clear that the present revenues are inadequate. The estimated rental revenue of the exchange under the proposed schedule is as follows:

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Business 1-party, 66 at \$2.50.....	\$165 00
Residence, 1-party, 50 at \$1.50.....	75 00
Residence, 2-party, 193 at \$1.25.....	241 25
Farm, 10-party, 315 at \$1.50.....	472 50
Business extension, 1 at \$1.00.....	1 00
Business extension, 3 at 75 cents.....	2 25
Residence extension, 1 at 50 cents.....	50
Extension bell, 1 at 25 cents.....	25
Extra mileage, 1 at 25 cents.....	25
<hr/>	
Annual rental revenue.....	\$11,496 00
Commissions on toll revenue.....	518 94
Miscellaneous revenue	129 80
<hr/>	
	\$12,144 74

Applying the expenses heretofore summarized, the allowance for maintenance and depreciation and a return of 7 per cent. on present value of \$40,000, we find the following result:

Gross revenue	\$12,144 74
Expenses, exclusive of maintenance and de- preciation	\$5,218 97
Allowance for maintenance and depreciation..	3,675 39
7 per cent. return on \$40,000.....	2,800 00
Surplus	450 38
<hr/>	
TOTAL	\$12,144 74

If 9 per cent. allowance is accepted for maintenance and depreciation, no surplus would be created.

Consideration must be given to the fact that applicant expects and will be required to readjust at least fifteen of its farm lines so that there will be no more than ten subscribers on a line. This will involve certain additions and expenditures which have not been included in the above estimates.

The schedule of rates herein applied for corresponds and is similar to schedule heretofore approved by the Commission, after investigation, in exchanges of similar size, character and standard of maintenance, and we are of the opin-

ion, and so find, that it is a just and reasonable schedule to apply to the Friend exchange.

ORDER.

It is, therefore, ordered, That, effective September 1, 1915, the Lincoln Telephone and Telegraph Company be, and the same is hereby, authorized to publish and collect the schedule of rates hereinafter set forth at its Friend exchange:

	<i>Metallic Circuit.</i>
Individual business	\$30 00
Individual residence	18 00
Two-party residence	15 00
Farm residence	18 00
Inner radius is city limits.	

Additional charge outside of inner radius where there is an existing pole line, for each quarter mile or fraction thereof:

One-party	\$5 00
Two-party	3 00
Extra service (two parties using same telephone), business...	1 00
Extension sets	1 00
Extension bells	25

It is further ordered, That the said company shall as soon as possible readjust and reconstruct its farm lines in such manner that not more than ten subscribers are served on any line; and that the present farm line rates shall apply on each and every line having more than ten subscribers thereon until such readjustment is made.

Entered at Lincoln, Nebraska, this eighteenth day of August, A. D. 1915.

IN THE MATTER OF THE APPLICATION OF THE VALPARAISO TELEPHONE COMPANY FOR AUTHORITY TO INCREASE ITS RATES.

Application No. 2207.

Decided August 23, 1915.

**Increase in Rates Authorized upon Installation of Metallic System —
Rate of Return of 7 Per Cent. of Actual Investment Held Reasonable.**

Applicant sought authority to increase its rates upon the installation of a metallic system in lieu of the grounded system previously operated.

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The Commission considered the value of the property and found that the cost of reproduction new was \$37,003.05 and that the actual investment was \$32,899.95. No dividends had been paid, and in determining the actual investment of the stockholders, the Commission increased the investment each year by the amount of dividends for the previous year computed at 7 per cent., which rate of return the Commission considered reasonable.

The Commission also considered the operating revenues and operating expenses of the applicant under both the old and proposed rates and conditions. Operating expenses and maintenance were so intermingled that an accurate statement of operating expenses was difficult to obtain. This difficulty was increased by the fact that the applicant had a contract with an electric light company under which it made collections and read meters, maintained lines and furnished "pin" space on its own poles for the electric company. As the amount received by the applicant for this service was found to pay all the expenses involved in furnishing the service, the Commission, in computing revenues and expenses, included both the revenues and expenses of this business.

Under the proposed rates, after making an allowance of 8 per cent. of the cost of reproduction for maintenance and reserve for depreciation and an allowance of 7 per cent. of the actual investment as a return on the investment, a small deficit would result, but the probability was that with the addition of new patrons, the return on investment would be about 7 per cent.

Held: That the rates proposed are reasonable and should be approved.

Rule Providing Advance Payment upon Installation of Telephone Approved.

Applicant sought permission to establish a rule providing for the collection in advance of rentals where a telephone is installed for a new subscriber. For a farm line installation it desired to collect one year's advance rental, and for an individual business or residence installation, three months' advance rental.

Held: That as the company is put to considerable expense in the installation of new telephones and as this expenditure is practically useless if the service is discontinued within a short time it is reasonable for the company to require payment in advance for new service, and as the cost of installation is greater for farm telephones than for city it is proper to require a larger payment in advance for these farm telephones than is charged for city installations;

That the rule applied for should be approved.

8 Per Cent. upon Cost of Reproduction New Held Reasonable Allowance for Maintenance and Reserve for Depreciation.

Held: That the applicant should be required to set aside out of its earnings annually an amount equal to 8 per cent. upon the reproduction

cost new of its property, the same to be expended for current maintenance and to care for the depreciation of the plant.

Segregation of Accounts Ordered.

Held: That the applicant should establish and maintain a new set of books for the Valparaiso Telephone Company separate and distinct from the accounts of the Valparaiso Electric Company, to the end that the earnings and expenses of the telephone company may be accurately shown, said new accounting system to be submitted to the Commission for approval on or before October 1, 1915.

APPEARANCES:

For applicant, *E. J. Clements.*

TAYLOR, *Commissioner:*

Applicant is completing the reconstruction of its telephone plant at Valparaiso, installing a metallic system to take the place of the grounded system heretofore operated, and desires to establish a new and increased schedule of rates. The rates asked for are as follows:

Individual business, in advance.....	\$2 50 per month
Individual residence, in advance.....	1 50 per month
Farm line, if paid on or before the tenth of the month.	1 25 per month
If paid after the tenth of the month.....	1 50 per month
Extension sets	75 per month
Extension bells	3 00 per year
Extra service (two parties using same telephone), business	1 00 per month
Farm line installation, per year in advance.....	15 00
Individual business installation, per three months in advance	7 50
Individual residence installation, per three months in advance	4 50
Charge for advertising on farm lines.....	1 00
Business telephones on party lines.....	1 75 per month

The net rate for farm line service, as originally asked for, was \$1.50 per month, but following a series of negotiations with the farmers involved, the rate was reduced to \$1.25 per month and the application amended accordingly. The figures offered in this case by applicant as tending to show the effect of the proposed rates were set up on the basis of the higher charge for farm line service. The

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present farm line rate for grounded service is \$1.00 per month.

The record in this case makes clear that the plant under consideration is one of the best of its type in the State. In addition to being thoroughly metallic throughout, it is built to a high standard. The best of metal has been used so that interference from weather and other physical conditions will be reduced to the minimum. The number on the farm line circuits has been reduced until the average is but slightly over eight to the line, and an improved type of telephone instrument has been installed for the use of farm subscribers. By means of a push button the central operator can be signalled by the farm patron without attracting the attention of other subscribers on the line. The instrument also possesses other advantages that make it desirable for farm service. Within the town there are nothing but individual lines, each subscriber having his own wire. In fact, the management has sought to construct a telephone plant that will give as good service as can be furnished under the present development of the art. In consequence of the standard of construction maintained, the investment in the plant is larger than the average plant of similar size. The Commission's engineer found the reproduction new value of the property to be \$37,003.05, and the present or depreciated value, \$30,073.06. On a basis of 363 subscriber's stations in service this gives a value of slightly over \$100 per station, reproduction new, and \$83.00 present value. These figures are high but are supported by the books of the company showing the original cost.

The outstanding capital stock at the present time is \$27,000, and there is an indebtedness of \$7,000. The company was started in 1904 with an original capital of \$13,000. In 1906 the present president of the company, C. H. Wood, purchased a half interest in the business for \$6,500. In 1908 because the property investment as shown by the books was in excess of \$20,000, the owners concluded to increase the capital stock to \$15,400. The added \$2,400 stock the partners divided equally, it being treated as a

stock dividend and no money being paid for it. In 1909 the stock was again increased, this time to \$25,000, and no new money was paid into the treasury of the company for it. The new stock was also divided as a stock dividend between the owners. At that time the books showed a property investment of \$27,000. In 1914 another issue of \$5,000 was authorized, but of this only \$2,000 has been sold, the remainder being in the treasury. The amount issued was paid for in cash at par.

No dividends have ever been declared or paid by the company. In arriving at the amount of money actually invested in the property by the stockholders, therefore, it is proper to compute the dividends that should have been paid and that were left for the extension and development of the plant. It is fair to assume that the original \$13,000 of stock represented an actual cash investment. Mr. Wood testified that he paid \$6,500 in cash for his half interest and that at that time the property inventoried at upwards of \$20,000. As the plant had been in operation but two years at that time, but a small portion of earnings could have been put back into the property. Starting with 1908, the company has borrowed considerable money. The interest on this borrowed capital, however, has been paid out of the earnings. For the reason that there is no record of the results of operation of the company prior to 1906, we will start with the capital outstanding at that time to ascertain the amount of the investment represented by the unpaid dividends, accepting \$13,000 as a reasonable allowance for the actual amount of money sacrificed by the owners. Allowing 7 per cent. as a reasonable rate of return and increasing the investment each year by the amount of the dividends for the previous year, we have \$10,899.95 as the sum of money belonging to the stockholders upon which they are now entitled to a return. Adding to the original \$13,000 this amount and the \$2,000 of stock recently issued and paid for we have \$25,899.95, which represents the actual money put into the property by the stockholders. To this should also be added the \$7,000 of indebtedness now outstanding, making a total capital liability of \$32,899.95.

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It is more or less difficult to arrive at an accurate statement of the operating expenses of the company. Applicant submits an estimate for the purpose of this case, but operating expenses and maintenance are so intermingled that the figures are misleading. Tested by the reports filed by the company with the Commission, they do not reflect the actual expenditures. For example, an estimate of \$120 is made to cover miscellaneous expenses, such as stationery and advertising, light, heat and power, rent of buildings, legal expenses, insurance, etc., whereas, the annual report of 1914 shows an expenditure for these items of \$755. An estimate of \$120 per year is also made for taxes. The report of the actual payment for this purpose in 1914 shows \$133.73, and in 1913, \$211. The figures are rendered the more confusing, moreover, because applicant has a contract with an electric light company at Valparaiso under which it makes collections and reads meters, maintains the electric light lines, furnishes " pin " space on its own poles for the same and performs other services. This work is all performed by the officers and employees of the telephone company. While the actual receipts and expenditures connected with the management and maintenance of the electric light property are kept separate on the books of the telephone company, the accounts are not so separated as to show the time put in by the persons employed. It appears, however, that the net remaining to applicant from this source is about \$800 per year. It is quite clear that this is sufficient to pay for all the expense the company is put to in connection with its contract and that if the amount is added to its gross revenue the result will be equitable to all concerned.

From the statement submitted by applicant, supplemented by the testimony and the figures found in the annual reports we are able to make a reasonably accurate estimate of the expense, one that, tested by comparison with other companies, seems fair under the circumstances. Using the figures thus arrived at and applying the conclusions as outlined with reference to capital investment, we have the following showing of the company's financial condition under

the proposed rates, assuming that there will be no change in the number of subscribers:

EARNINGS.

27 Individual business at \$30.00.....	\$810 00	
78 Individual residence at \$18.00.....	1,404 00	
258 Farm at \$15.00.....	3,870 00	
		<hr/>
TOTAL RENTALS		\$6,084 00
Toll (12½ per cent. of gross receipts).....	\$247 20	
Net income from contract with Electric Light Company	800 00	
		<hr/>
		1,047 20
		<hr/>
TOTAL GROSS RECEIPTS		\$7,131 20

EXPENSES.

Officers' salaries	\$1,380 00	
Operators' salaries	900 00	
Stationery and advertising.....	84 29	
Light, heat and power.....	72 15	
Rent of buildings.....	114 00	
Legal expense	25 00	
Traveling expense	25 00	
Insurance	25 00	
		<hr/>
TOTAL EXPENSE		\$2,625 44
Maintenance and depreciation (8 per cent. on \$37,003)	\$2,960 24	
		<hr/>
		2,960 24
		<hr/>
		\$5,585 68
Net operating income.....	\$1,545 52	
Deductions:		
Taxes	\$200 00	
		<hr/>
		200 00
		<hr/>
		\$1,345 52
Dividends (7 per cent. on \$32,899.95).....	2,302 99	
		<hr/>
Deficit		\$957 47

While these figures show a deficit under the proposed rates, it is very probable that the further development of the field and the addition of more patrons will increase the

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revenue to the point where the net earning will approximate 7 per cent. on the investment. There will be slight earnings, also, from the incidental services provided for in the schedule. It is clear, however, that the rates as proposed are reasonable and that the revenue they will produce is necessary to the proper operation of the plant and the payment of a return to the stockholders.

Applicant asks permission to establish a rule providing for the collection in advance of rental where a telephone is installed for a new subscriber. For a farm line installation it is desired to collect a year's advance rental, and for individual business and residence, three months' advance rental. As the company is put to considerable expense in the installation of new telephones, which expenditure is practically useless if the service is discontinued within a short time, it is regarded as a reasonable regulation to require payment in advance for new service. As the cost of installation is greater for farm telephones it is proper to require a larger payment in advance than for city installations. The rule as applied for will be approved.

ORDER.

It is, therefore, ordered, That the Valparaiso Telephone Company be, and the same hereby is, authorized to charge and collect the following schedule of rates, same to become effective September 1, 1915:

Individual business, in advance.....	\$2 50 per month
Individual residence, in advance.....	1 50 per month
Farm line, if paid on or before the tenth of the month.	1 25 per month
If paid after the tenth of the month.....	1 50 per month
Extension sets	75 per month
Extension bells	3 00 per year
Extra service (two parties using same telephone), business	1 00 per month
Farm line installation, per year in advance.....	15 00
Individual business installation, per three months in advance	7 50
Individual residence installation, per three months in advance	4 50
Charge for advertising on farm line.....	1 00
Business telephone on party lines.....	1 75 per month

It is further ordered, That the said Valparaiso Telephone Company be, and the same hereby is, notified and required to set aside out of its earnings, annually, an amount equal to 8 per cent. upon the reproduction, new, value of its property, the same to be expended for the current maintenance and to care for the depreciation of the plant.

It is further ordered, That the said applicant establish and maintain a new set of books for the Valparaiso Telephone Company separate and distinct from the accounts of the Valparaiso Electric Company, to the end that the earnings and expenses of the telephone company may be accurately shown, said new accounting system to be submitted to this Commission for approval on or before October 1, 1915.

Made and entered at Lincoln, Nebraska, this twenty-third day of August, 1915.

NEW YORK.

Public Service Commission — Second District.

IN THE MATTER OF THE COMPLAINT OF THE BOARD OF SUPERVISORS OF THE COUNTY OF ORLEANS AND THE BOARD OF TRUSTEES OF THE VILLAGE OF ALBION *v.* NEW YORK TELEPHONE COMPANY AS TO INCREASED TELEPHONE RATES.

Case No. 2453.

Decided July 29, 1915.

Reduction in Rates Refused.

Complainants objected to the increase in rates for two-party business service from \$24.00 to \$30.00 per annum and for four-party residence service from \$12.00 to \$15.00 per annum, and sought to have these rates reduced to the former level.

Prior to May, 1911, two competing systems were operating at Albion. The rates were low, the service poor. The respondent purchased and merged with its own, the system of its competitor, and thereupon proceeded to improve the physical property. In July, 1911, the respondent's rate schedule was revised and certain increases in rates, including those objected to, were made.

The Commission considered an appraisal of the property, and also estimates of the cost of reproduction new and of the amount of depreciation.

The company was earning less than 8 per cent. on the depreciated value as a rate of return, and if a proper reserve for depreciation were made, even the increased rates would not yield a fair return.

Held: That the reduction of rates should be refused.

Possibility of Improvement in Method of Conducting Business Suggested.

The management of the property of the respondent in the Albion local area was not handled direct from Albion but from the district office of the Western Division of the respondent.

The Commission observed that the company's business and its relations with the public might possibly be facilitated if it had local managers who were given more responsibility.

APPEARANCES:

Herbert T. Reed, Esq., and Sanford T. Church, Esq., Albion, N. Y., for the Chamber of Commerce of the village of Albion and other interested citizens.

R. V. Marye, Esq., and Walter F. Crowell, Esq., of New York City, for the respondent.

OPINION.

CARR, *Commissioner*:

On July 24, 1911, the board of supervisors of the county of Orleans, and the board of trustees of the village of Albion filed a complaint with the Commission against the increase in the telephone rates of the respondent whereby the charge for two-party business service was advanced from \$24.00 to \$30.00 per annum, and the four-party residence service, from \$12.00 to \$15.00 per annum. This increase in rates was made about July 1, 1911.

Numerous hearings were held by the Commission and the record in the case is very voluminous, more than 1000 pages of testimony having been taken. The matter was gone into most exhaustively from every standpoint and the respondent presented facts and figures in great detail relating to its business in Albion and vicinity. There are no complicated legal questions involved and the matter can be disposed of upon the facts and figures hereinafter set forth.

The Albion local area, so called, includes the incorporated village of Albion and the villages of Barre Center and Waterport. The territory covered is about 192 square miles.

Prior to July 1, 1911, the following rates were in effect in the Albion local area:

	<i>Per</i> <i>annum.</i>
Direct lines (business).....	\$36 00
Two-party lines (business).....	24 00
Direct lines (residence).....	24 00
Two-party lines (residence).....	18 00
Four-party lines	12 00
Farmer line service.....	12 00

The respondent revised these rates as of July 1, 1911, by increasing the two-party line business rate from \$24.00 to \$30.00; it eliminated the \$18.00 two-party line residence rate and increased the rate on the four-party lines and for farmer line service from \$12.00 to \$15.00. An additional classification was also established for business service on farmer lines at a rate of \$21.00.

Prior to May, 1911, two separate telephone systems were operated in the village of Albion: one by the respondent and the other by the Home Telephone Company of Albion. As a result of the competition between the two companies, each made very low rates and undoubtedly did business at a loss. Many of the residents of the community were obliged to have two telephones in order to get the service which they required. In addition to this, the service of the companies was not as good as it should have been. The Home company was unable to meet its obligations and defaulted on its bond interest in 1910 and its property was sold at foreclosure in May, 1911, and was repurchased by the respondent. Thereafter, the respondent began to make the change required for the operation of both systems as one and to make improvements which were needed to give proper service in the Albion local area. The property in the Albion local area belonging to the respondent and excluding the property formerly owned by the Home Telephone Company of Albion was owned and operated by the Bell Telephone Company of Buffalo before that company was acquired by the respondent. Prior to the year 1900 there were 37 telephones on the Bell system in the Albion local area and at the time the complaint was filed there were about 1927 stations in the same area. The following is a statement of the distribution of the different telephones in the Albion local area as of January 1, 1913:

TOTAL STATIONS—ALBION LOCAL AREA

JANUARY 1, 1913.

	<i>Direct</i>	<i>2-party</i>	<i>4-party</i>	<i>Rural</i>	<i>Service</i>	<i>Exten- sions</i>	<i>Total</i>
Albion	67	118	635	403	15	62	1,300
Waterport ..	3	...	...	410	2	...	415
Barre Center	2	...	...	193	...	1	196
TOTAL	72	118	635	1,006	17	63	1,911

An examination of the property was made by the engineers of the Commission and the plant of the respondent was found to be of a high grade and adequate for the busi-

ness in the Albion local area. It will be observed that the bulk of the service is required for the two-party business and the four-party and rural lines. These are the classes of service upon which an increase has been made in the rates and are the only classes upon which any substantial amount of increased revenue could be derived by a small increase in the individual rate.

For the purpose of furnishing a first class telephone service, the respondent has provided a considerable amount of aerial cable in this area and has also placed some of its cable underground. The net amount expended in improving the property during the year 1912 was approximately \$37,000. The witnesses for the respondent testified as to the inventory value of the property for each of the three years ending December 31, 1912, in order to show the amount of the property in the public service upon which the respondent was entitled to earn a return. The valuations are based on the costs determined by the company's experts, but it was not proven that all of these amounts had been actually expended. The following tabulation gives these figures which are based on an actual inventory and appraisal of the plant:

SUMMARY OF ACTUAL INVENTORY AND APPRAISAL OF PLANT

ALBION LOCAL AREA.

ALBION, WATERPORT, BARRE CENTER.

	<i>As of December 31, 1912</i>	<i>As of December 31, 1911</i>	<i>As of December 31, 1910</i>
Central office equipment.....	\$23,465	\$14,859	\$13,996
Station equipment	24,991	24,154	25,165
Underground plant	5,140	4,786	4,406
Aerial plant	222,465	234,633	180,411
Office furniture and fixtures.....	601	601	601
General store equipment.....	146	146	146
General tools and implements.....	213	213	213
Supplies	4,811	4,710	4,906
TOTAL	\$281,832	\$284,102	\$229,844

There was some dispute at the hearings as to whether or not any amounts had been paid for rights of way, although the witnesses for the respondent showed that it was obligated to acquire rights of way for its lines and that if the plant was to be reproduced, expenditures would probably need to be made for that purpose. There was also some criticism of the various overhead charges which were estimated by the engineers of the respondent but it is a well known fact that these expenses are incurred and are necessary in work of this character and no evidence was produced by the complainant to successfully refute the figures presented on behalf of the respondent. As a further check upon the tangible value of the telephone property in service in the Albion local area, the respondent introduced figures to show the estimated cost of the plant reproduced new as of December 31, 1912, such figures being based on actual bids received for the material required plus the expense of installing the same. The amount of this estimate was \$276,400, of which \$188,427 covered material and labor and \$41,290 covered supplies, engineering, construction, superintendence and contingencies and other undistributed construction costs and the balance represented various overhead expenses. These figures were checked by the engineers of the Commission and found to be substantially correct.

The question of depreciation was also considered and the respondent submitted an estimate showing the estimated depreciation of this property as of December 31, 1912, aggregating \$73,197, as follows:

ALBION LOCAL AREA.

ESTIMATED DEPRECIATION AS OF DECEMBER 31, 1912.

	<i>Estimated Depreciation.</i>
Central office equipment.....	\$3,520
Station equipment	6,248
<i>Exchange lines:</i>	
Underground conduit	\$139
Underground cable	232
*Exchange pole lines in village.....	2,673
*Exchange pole lines outside village.....	25,932
Aerial cable	3,317
Exchange aerial wire — bare copper and insulated.	4,506
Exchange aerial wire — bare iron.....	10,991
TOTAL EXCHANGE LINES.....	47,790
<i>Toll lines:</i>	
*Toll pole lines.....	\$12,497
Toll aerial wire — bare copper.....	1,384
Toll aerial wire — bare iron.....	1,640
TOTAL TOLL LINES	15,521
<i>General equipment:</i>	
Supplies .....	....
Office furniture and fixtures.....	\$60
General store equipment.....	15
General tools and implements.....	43
TOTAL GENERAL EQUIPMENT.....	115
<i>Right of way:</i>	
Exchange .....	....
Toll .....	....
TOTAL RIGHT OF WAY.....	....
GRAND TOTAL	\$73,107

* Includes cross arms and guys.

If it could be fairly claimed that the company was only entitled to earn a return of say 8 per cent., upon the depreciated value of its property as of December 31, 1912, which it may be considered for the purpose of argument was \$208,635, then the amount of this return would be \$16,690. Even dealing with the matter in this drastic manner, the company showed conclusively that it was not earning this return upon its property. It is now generally conceded that a public service corporation must set aside out of its earnings annually a certain reserve to provide for the depreciation of its property and if this had been done by the respondent after the increase in rates upon which the complaint herein is founded, it would still fall far short of earning a fair return upon its property notwithstanding the increase in revenue obtained by the increased rate. The following tabulation showing the earnings and expenses of the company during the three years ending December 31, 1912, in which there has been included, as estimated expense, an item for depreciation, will set forth the situation much more concisely than any extended argument. It shows that notwithstanding the corporation had earnings of over \$35,000 in 1912, yet, if proper amounts were set up to cover the various expenses including depreciation, the company was not only failing to earn a fair return on its investment in the Albion local area but was actually incurring a deficit.

SUMMARY OF REVENUE AND EXPENSES FOR YEARS 1910, 1911, 1912.

<i>Revenue:</i>	<i>1910</i>	<i>1911</i>	<i>1912</i>
Exchange	\$23,976 24*	\$26,694 93	\$29,202 81
Toll	7,648 70*	6,578 22	7,502 59
Miscellaneous .....	.....	18 01	183 85
	<hr/>	<hr/>	<hr/>
	\$31,624 94	\$33,291 16	\$36,889 25
 <i>Deductions from revenue:</i>			
Rights, privileges and use of property	<hr/> 1,437 24*	<hr/> 1,477 97	<hr/> 1,700 32
	<hr/>	<hr/>	<hr/>
GROSS REVENUE MINUS DEDUCTIONS	\$30,187 70	\$31,813 19	\$35,188 93
 <i>Expenses:</i>			
General expense	\$367 32*	\$320 13	\$381 52
Commercial expense	8,937 67	12,502 82	9,491 02
Traffic expense	7,306 38	10,359 95	11,920 61
Plant expense	12,543 00	15,592 00	15,543 00
Depreciation	16,591 00	20,873 00	20,464 00
Taxes	1,703 06	2,303 77	2,484 44
Insurance	128 92	200 08	95 38
	<hr/>	<hr/>	<hr/>
TOTAL EXPENSES	\$47,577 35	\$62,151 75	\$60,379 97

* Based upon 5 months' figures shown on detailed exhibits.

The item for depreciation was sharply scrutinized but the respondent showed that this item was determined by the character of the property in the Albion local area and that where the property consists of short-lived elements such as wires, poles, cable, switchboards, etc., and there is no valuable real estate, then the depreciation is higher, but when there is valuable real estate comprising a portion of the plant, that tends to reduce the amount which it is necessary to set up for depreciation as the low depreciation on the real estate has the effect of equalizing the depreciation on the entire property. Figures were presented to show that upon an assumption that there were 1935 stations in the Albion local area in 1912, the cost per station

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for the traffic, plant and commercial departments alone amounted to \$19.37 each based upon the following figures:

Traffic department expense.....	\$11,920 61
Plant expense	16,073 81
Commercial expense	9,491 08

Based on an estimated depreciation for the year 1912 of \$20,464, the amount of depreciation per station would be about \$10.00.

During the progress of the case, it appeared that the management of the property of the respondent in the Albion local area was not handled direct from Albion but rather from the district office of the Western Division. In this way, the property in each different locality is made to bear its pro rata share of the total burden. If in the judgment of the respondent, its business can be better handled in this way, it, of course, should be permitted to so continue. It may be that its business and its relations with the public could be facilitated if it had local managers who were given more responsibility, but as to this, the Commission does not intend to express any opinion. It developed during this proceeding that practically every act on the part of the local representatives of the company in Albion requiring any determination as to the conduct of the affairs of the company had to be referred to the district office for approval before anything could be done. This was particularly true with regard to traffic matters, plant matters and commercial matters inasmuch as the local representatives had no authority to act upon such matters without the approval of the district heads. It is not our intention to criticise the methods of the respondent in conducting its business in this way but it may be, inasmuch as this matter has been brought out so fully in this case, that the observation herein made will lead the respondent to investigate this matter fully so as to ascertain whether it is doing considerable unnecessary work which might be eliminated and thereby reduce the expense of operation.

This opinion is perhaps longer than would be necessary to reach a proper decision of the case but it was felt that it might be better under the circumstances to elaborate somewhat upon the facts so that it would be thoroughly understood that the case had been considered from all standpoints before a decision was reached.

It is our opinion that the respondent was justified in increasing its rates on July 1, 1911, in the Albion local area and that the complaint should be dismissed and an order will be made to that effect forthwith.*

July 29, 1915.

* Copy of order omitted.

OKLAHOMA.

Corporation Commission.

COMANCHE TELEPHONE COMPANY *et al.* v. PIONEER TELEPHONE AND TELEGRAPH COMPANY.

Cause No. 2315 — Order No. 939.

Decided August 18, 1915.

Privilege of Designating Route of Message Held to Belong to Company Originating Call.

Complainant sought an order directing the defendant to permit the routing of messages north from Addington through Comanche to Duncan, instead of routing said messages south from Addington to Waurika and thence north to Duncan.

It was possible for Addington to talk with Duncan in two ways: (1) over the Comanche company's line north to Comanche, and thence north over the Pioneer's short line between Comanche and Duncan; or (2) over the Pioneer's short line from Addington south to Waurika, thence north over the Pioneer's long distance line to Duncan. When a party in Addington called via Comanche for a party in Duncan, the Duncan operator would refuse to complete the connection and would insist that the party calling should make his call via Waurika to Duncan.

Held: That the exchange originating the call should be accorded the privilege of designating the route to be used where more than one route is accessible (or of designating the line to be first used when one or more initial lines are accessible in making a circuit, including the other lines or property necessary to complete connections in such circuit), since it is the originating exchange to which the calling party looks for the procuring of the necessary connections and for the handling of his business with despatch;

That the right of the originating company to designate the circuit or initial line is a privilege which is to be accorded only so long as it appears to be a just and rational policy, and that it is not the intention of the Commission to establish an iron clad rule recognizing any vested right in which public service agencies may trade or traffic, as those in control of utilities used for public service must at all times proceed with due regard for the character of the service to be furnished, and when the originating exchange is permitted to route a message that routing should be done with as much despatch as possible and with the least inconvenience to the calling party;

That an exchange having access to more than one long distance line ought to maintain such relations with both as to be able to use either when the public convenience requires such use:

Ordered, That the Pioneer Telephone and Telegraph Company shall complete connections at Duncan for calls to said place or points beyond when originating at Addington and routed or connected over the Comanche toll line through Comanche to Duncan and other points.

APPEARANCES:

For complainant, *E. C. Patton*.

For defendant, *Claude Nowlin*.

FINDINGS OF FACT, OPINION AND ORDER.

HUMPHREY, Commissioner:

The complainant, Comanche Telephone Company, by H. E. Hendricks, manager, on May 18, 1915, filed the complaint herein, and thereafter, on June 8, the cause came on for hearing, all parties being present and ready for trial.

The parties are transmission companies, operating for hire in this State, and it is alleged that complainant owns and operates a toll line connecting the exchange at Comanche with the exchange at Addington; that defendant owns and operates a toll line between Duncan and Waurika, passing through Comanche and Addington; also a toll line between Duncan and Comanche; that defendant refuses to accept messages routed (or offered for routing) from Addington to Duncan over line of complainant to Comanche, although such routing is more direct; but in lieu of such routing requires the calls originating at Addington and terminating at Duncan, to be made over its own line, thence north passing the place of origin to Duncan.

The complaint prays that the defendant be required to permit the routing of messages north from Addington, through Comanche to Duncan, and points beyond, and to make connections and to put through calls so routed, impartially and with dispatch.

The Commission having heard and considered the testimony, finds that Duncan, Addington, Comanche and Waurika are in line, each one with the others. Duncan

being 9.6 miles north of Comanche, while Comanche is 8.6 miles north of Addington, while Addington is 6.2 miles north of Waurika, making a total distance of 24.4 miles from Duncan on the north to Waurika on the south; that the Pioneer Telephone and Telegraph Company owns the exchange at Duncan and the exchange at Waurika; that it owns a toll line which connects the said places; that in addition to the aforesaid toll line, it owns two shorter lines, one of which makes connections between Duncan and Comanche, the other of which makes connections between Waurika and Addington, both being parallel to the first mentioned line; that the exchange at Comanche belongs to the Comanche Telephone Company; that the exchange at Addington belongs to the Jefferson County Telephone Company; that the complainant owns a toll line connecting the exchange at Comanche with the exchange at Addington; that this line, by connections at its terminals with the two short lines above referred to as belonging to the Pioneer Telephone and Telegraph Company, makes a complete circuit from Duncan on the north to Waurika on the south, passing through Comanche and Addington.

The Commission further finds that it is possible for Addington to talk to Duncan in two ways: (1) Over the Comanche short line to Comanche, and through the exchange at said place to Duncan over the Pioneer's short line between Comanche and Duncan; (2) Over the Pioneer's short line from Addington to Waurika, through the Waurika exchange to Duncan over the Pioneer's long distance line.

See the following diagram:*

The facts in this case are practically conceded, and perhaps a more comprehensive view of the question involved might be obtained from a review of the following testimony of E. H. Hendricks:

Q. Your complaint in this case is that the Pioneer Telephone company by its operator at Duncan, refuses to route messages via your line

*Copy of diagram omitted.

from Addington to Comanche in connection with the Pioneer line from Comanche to Duncan?

A. Yes, sir.

Q. I will ask you to state how they do route messages from Addington to Duncan and other points north?

A. They route them 6 miles south from Addington over a line and back through Addington over another line into Duncan.

Q. Now, calls originating at Addington and destined for Duncan and points north are back-hauled to Waurika, and then routed north over the Pioneer lines all the way?

A. Yes, sir.

Q. The Pioneer company refuses to accept calls from Addington via your line to Comanche, and in connection with the Pioneer line at Comanche to Duncan?

A. They have refused me.

Q. And what you want is the routing of messages over your line in connection with the Pioneer line to Duncan and points north, when parties desiring to talk that way so request?

A. Yes, sir.

Q. Now, the trouble is, that the Addington exchange is discriminating between your line and the Pioneer line by giving the Pioneer line the business and withholding it from your line?

A. Well, it is discrimination, but then, of course, since they act according to the Pioneer's instructions, I don't know whether they would be the ones doing it or not, I wouldn't think so.

Q. What is the reason you wouldn't have a better case against the Addington people than against the Pioneer people?

A. Because the Addington people tried to route this for me over the route I desired and did all they could to get the call through for me, and Duncan wouldn't have it that way, and Duncan is a Pioneer office.

Q. And you wanted to talk to Duncan?

A. Yes, sir, from Addington.

Q. And when the Addington people tried to send this message that way, the Duncan operator wouldn't receive it?

A. Yes, sir, and I had the money to pay for the call.

Q. This case then, is not a matter of sending messages, it is a matter of reception of the message and the delivery at the receiving end?

A. Yes, if I understand you, I think that is right.

Q. Just depends upon which route you go whether they will take it or not?

A. Yes, sir.

The gist of the complaint seems to be that when a party in Addington calls via Comanche for a party in Duncan (where the exchange is owned by the Pioneer) the Duncan

operator will not complete connections (or "put up" the party called), but insists that the party calling shall make his call via Waurika to Duncan.

The difference is, that a conversation between Addington and Duncan via Comanche is made over wire of the Comanche Telephone Company and wire of the Pioneer Telephone and Telegraph Company connecting at the exchange in Comanche, while a conversation between Addington and Duncan via Waurika is made over the lines of the Pioneer Telephone and Telegraph Company connecting at the exchange in Waurika.

The right or privilege to direct "the routing of a message," or rather to designate which one of the two competing circuits shall be used, is the matter to be determined in this case.

The various contentions made are comprised by the following suggestions:

1. That the party calling should be accorded the right to designate the circuit to be used.

2. That the exchange originating the call should have the right to designate the line (or initial line, in case of different connections to complete a circuit) to be used.

3. That the exchange terminating the call, or "putting up" the party called, should have the right to designate the circuit to be used.

The Commission is of the opinion that to permit the party calling to designate the circuit to be used, might prove inconvenient to the public at large, (as many might have to wait during arbitrary tie-up of line by one) and, therefore, detrimental; that since the transmission company (rather than the party calling) is, by law, under the supervision of the Commission, in order to render acceptable services to the public generally, and to meet the expectations and requirements of the Commission the exchange originating the call should be accorded the privilege of designating the route to be used, where more than one route is accessible (or, of designating the line to be first used, when one or more initial lines are accessible in

making a circuit, including other lines or property necessary to complete connections in such circuit). This, of course, precludes the suggestion that the exchange terminating the message, or "putting up" the party called, should have the right to designate the line or lines to be used. The originating exchange is the one to which the calling party looks for the procurance of the necessary connections and for the handling of his business with dispatch, and it would seem rather arbitrary to ignore the originating exchange while vesting in the terminating exchange the right of routing a message which the originating exchange is supposed "to put through."

As is shown above, the Comanche toll line connects with the Pioneer toll line at Comanche. The record shows that in the particular transaction that precipitated this case, the Addington exchange was trying to get connections for a call from Addington to Duncan via Comanche; we, therefore, assume that satisfactory traffic arrangements exist. It is to be observed that the reason assigned for refusal to complete the desired connections does not contradict this assumption.

The opinion heretofore expressed disposed of this case, but it is to be noticed that the proposition of permitting the originating exchange to designate the circuit or initial line (in case more lines than one are necessary to complete a circuit) is accorded as a privilege, which the exigencies of the situation suggest as being proper, but it is not intended by the Commission that this shall be considered as anything more than a privilege, which is to be accorded only as long as it appears to be a just and rational policy; or, in other words, it is not the intention of the Commission to establish an iron-clad rule recognizing any vested right, in which public service agencies may trade or traffic, as those in control of utilities used for public service must at all times proceed with due regard for the character of service to be furnished, and when the Commission permits the originating exchange to route a message, it is to be implied that the routing shall be done with as much dispatch as possible, and with the least inconvenience to the calling

party. An exchange having access to more than one long distance line ought to maintain such relations with both as to be able to use either, when the public convenience requires such use.

Wherefore, the premises considered, and the Commission being fully advised,

It is considered, ordered and adjudged, That the Pioneer Telephone and Telegraph Company, so long as proper traffic arrangements exist, be, and is hereby, required to complete connections at Duncan for calls to said place, or points beyond, when originating at Addington and routed or directed over the Comanche toll line through Comanche to Duncan and other points.

Done at Oklahoma City, Oklahoma, on this the eighteenth day of August, 1915.

W. P. McCULLOUGH, *et al*. v. PIONEER TELEPHONE AND TELEGRAPH COMPANY.

Cause No. 2320 — Order No. 941.

Decided August 20, 1915.

Increase in Rates upon Substitution of Common Battery System for Magneto System Authorized.

OPINION AND ORDER.

The complaint in this case was filed on June 3, 1915, and it alleges that the Pioneer Telephone and Telegraph Company was at that time giving inefficient and unsatisfactory exchange service in the city of Miami, Oklahoma, and that the cause of the trouble was largely due to the character of the plant in use at said place.

The complainants pray the Commission to make an order requiring the defendant to give better service in the city of Miami and to install a common battery system in that city.

It appears that after the complaint was filed, the defendant company took steps to bring about a correction of the defects in its telephone system at Miami which seemed to be the cause of complaint, and it also appears that a peti-

tion was circulated among the telephone users in said city for the purpose of determining whether or not the telephone subscribers thereat would be willing to pay an increased rate if the system in said city were changed from magneto to a common battery plant.

The petition aforesaid was signed by a large majority of the telephone users in the city and they agree that upon the installation of a common battery plant, they will pay \$2.50 per month for business telephones and \$1.50 per month for residence telephones.

The said petition was filed with the papers in this case and thereupon the Commission addressed a letter to the mayor and city council of Miami, Oklahoma, calling attention to the petition, and on August 6, 1915, the mayor answered as follows:

"Referring to yours of July 31, 1915, in regard to the telephone proposition at Miami, Oklahoma, a majority of the patrons of the Pioneer Telephone and Telegraph Company has by petition signified their willingness for this improvement, which petition should be on file in your office."

The defendant company represents that material is being assembled for the installation of the new plant and that the work will proceed without delay and with due progress, and it is also represented that the cost of the plant will necessitate the charges proposed in order to afford a return on the investment.

The Commission finds that all parties to this proceeding are willing to adjust the same in the way suggested and in order to facilitate and expedite the construction of the new plant, the Commission, without approving the rates proposed, hereby permits the same to be temporarily put into effect after the renewal of the plant, but if after the plant is completed the cost thereof and the service afforded does not appear to justify the rates under consideration, the same, upon proper complaint, may be investigated.

It is therefore ordered, That upon consideration of the above facts, when the Pioneer Telephone and Telegraph Company completes the installation in the city of Miami, Oklahoma, of a modern common battery central energy tele-

phone system that the maximum rates allowed to be charged by said Pioneer company for local exchange telephone service at Miami, Oklahoma, shall be as follows:

Unlimited special line business telephone per month.....	\$2 50
Unlimited special line residence telephone per month.....	1 50

Provided, That from this date and until the completion by the said Pioneer company of the common battery telephone system in the city of Miami the rates for local exchange telephone service at Miami shall not exceed the rates now in effect at said exchange.

Provided further, That before the Pioneer company puts into effect at Miami the rates authorized in this order said company shall notify the Commission that the said common battery system contemplated in this order shall have been installed.

Done at Oklahoma City, Oklahoma, on this the twentieth day of August, 1915.

FARMERS TELEPHONE LINES OF GROVE, OKLAHOMA, v. UNITED
TELEPHONE COMPANY OF AFTON, OKLAHOMA.

Cause No. 2244 — Order No. 948.

Decided August 27, 1915.

Reduction in Switching Rates Ordered — Minimum Rate per Line Fixed.

FINDINGS OF FACT, OPINION AND ORDER.

The complainants, Farmers Telephone Lines of Grove, filed herein their petition against the defendant, United Telephone Company of Afton. The petition is as follows:

“ That he resides near Grove, Oklahoma, and is president of several farmers telephone lines running into Grove, Oklahoma, and connecting at that point with United Telephone Company.

“ That the above named defendant is a corporation owning a telephone system at Grove, Afton and Fairland, in the State of Oklahoma, and that as such is subject to the laws of the State of Oklahoma, relating to telephone lines.

“ Complainant states that each of the farmers lines owns its own equipment to the incorporated town of Grove and that the defendant renders

each of them a switching service and charges them for that service 50 cents for each telephone on each and every line; that said charge is unreasonable for the service so rendered and that fair and reasonable compensation would be 25 cents instead of 50 cents for each telephone; that complainant understands that this service is being furnished by telephone companies in other towns to the farmers lines for 25 cents for each telephone and that is a fair and reasonable price.

"Wherefore the complainant prays that the aforesaid defendant be required to answer the charges herein and after due hearing and investigation an order be made commanding defendant to furnish switching service for each of the complaining farmers lines, in the town of Grove for 25 cents for each telephone upon each line or to establish a minimum rate of \$1.50 per month and a maximum rate of \$5.00, and for such other and further order as the Commission may deem necessary and just."

The complaint in due time came on for hearing, all parties being represented and announcing themselves ready for trial.

The Commission having examined the testimony, and being fully advised, finds that the facts set forth in the complaint are true and is of the opinion that the relief prayed for should be granted.

Wherefore, the premises considered, and the Commission as aforesaid being fully advised,

It is considered, ordered and adjudged, That the defendant, United Telephone Company of Afton, be, and is hereby, required to furnish switching service for each of the Farmers Telephone Lines of Grove joining herein as complainants, for a switching charge of 25 cents per month for each and every telephone upon each and every line involved.

Provided, however, That each and every line shall pay a minimum of \$1.50 per month per line, and the collections shall be made and paid over to the defendant company under the operating rules of this Commission heretofore prescribed.*

Done at Oklahoma City, Oklahoma, on this the twenty-seventh day of August, 1915.

*A similar order was entered in the case of *W. R. Hatter v. Purcell Telephone Company*. Cause No. 2245 — Order No. 949. Decided August 27, 1915.

J. E. CROWDER, COUNTY ATTORNEY OF MCCLAIN COUNTY, OKLAHOMA, v. PURCELL TELEPHONE COMPANY OF PURCELL, MCCLAIN COUNTY, OKLAHOMA.

Cause No. 2246 — Order No. 950.

Decided August 28, 1915.

Reduction in Toll Rates Ordered — Schedule for Toll Charges Established.

Complainant sought a reduction in the rates charged for toll service between Purcell and Wayne, Purcell and Washington, and Purcell and Rosedale.

The respondent was charged 25 cents for a three-minute toll message between Purcell and Wayne, a distance of approximately seven miles, 20 cents for similar messages between Purcell and Washington, a distance of approximately eight miles, and 25 cents for similar messages between Purcell and Rosedale, a distance of approximately ten miles. The reports of the toll operating expenses and revenues showed a return of 33.8 per cent. upon the original toll investment without deducting any amount for depreciation.

The Pioneer Telephone and Telegraph Company also had toll lines between Purcell and Wayne and charged 15 cents for a three-minute conversation. The prevailing rates for three-minute toll messages throughout the State were 15 cents for the first ten miles or less, and 5 cents additional for each additional ten miles.

Held: That the charges complained of are excessive, and that for long distance service the maximum charge to the defendant should be 15 cents for the first ten miles or less and 5 cents additional for each additional ten miles;

That each rate herein complained of should be reduced to 15 cents for a three-minute conversation;

That for a conversation extending over the three-minute period, the charge for each additional minute or fraction thereof should be one-third of the initial charge;

That the Commission does not approve the schedule of toll rates above set forth as showing a just charge in all cases or even in the present case, but feels that the same will afford the defendant ample remuneration, although they might be found, upon more careful investigation, to be too high.

FINDINGS OF FACT, OPINION AND ORDER.

On the first day of March, 1915, the complainant, J. E. Crowder, county attorney of McClain County, Oklahoma, filed herein his complaint against the defendant, Purcell

Telephone Company of Purcell, McClain County, Oklahoma.
The complaint is as follows:

"That he is the duly and legally elected, qualified and acting county attorney of McClain County, State of Oklahoma.

"That the above named defendant is a public service corporation, organized under the laws of the State of Oklahoma in the State of Oklahoma, and that as such is subject to the laws of the State of Oklahoma relating to telephone and telegraph companies.

"The defendant corporation charges a rate of 25 cents on three-minute conversations between Purcell and Wayne, Oklahoma; between Purcell and Washington, Oklahoma, 20 cents; between Purcell and Rosedale, Oklahoma, 25 cents, and that 15 cents is a sufficient charge to enable said defendant corporation to earn a handsome rate of interest on its investment.

"Wherefore the complainant prays that the aforesaid defendant be required to answer the charges herein, and after due hearing and investigation an order be made commanding said defendant corporation to reduce its charges for three-minute telephone conversations to 15 cents from Purcell to Wayne, from Purcell to Washington, and from Purcell to Rosedale, and for such other and further order as the Commission may deem necessary and just."

The cause afterwards came on for hearing, all parties being represented and ready for trial.

The Commission having thoroughly considered the evidence finds, that the defendant is a transmission company carrying on business in the State of Oklahoma, its principal place of business being Purcell, McClain County, Oklahoma; that the defendant charges a rate of 25 cents on three-minute conversations over its line between Purcell and Wayne, which places are about seven miles apart; that it charges a rate of 20 cents on three-minute conversations between Purcell and Washington, which places are about eight miles apart; that it charges a rate of 25 cents on three-minute conversations between Purcell and Rosedale, which places are about ten miles apart.

The defendant has filed with the Commission its semi-annual report covering the period between July 1, 1914, and December 31, 1914, and in this report it fixes the original cost of the toll plant at \$19,727.97.

At the trial the complainant introduced an exhibit compiled from the monthly reports of the defendant filed with

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the Commission covering eleven months in the year 1914, viz: February to December, both inclusive, and from this exhibit it appears that the operating revenues of the defendant for the time stated were \$8,061.46; that its operating expenses were \$1,948.77; that its net revenues therefor were \$6,112.69.

The testimony does not show how old the toll system is nor the amount of depreciation to date, nor the rate of depreciation. The figures mentioned show a net earning of 33.8 per cent. per annum on the original investment, which per cent. would be probably enhanced by showing the present value of the plant after deducting the amount of depreciation.

This Commission has not heretofore established nor directly approved a minimum rate for long distance service.

The Pioneer Telephone and Telegraph Company maintains a long distance line which passes through Purcell and Wayne and has connections with the exchanges at said places, and for a three-minute conversation over its line between said places it charges 15 cents. At the trial some inquiry was made into the matter of rates generally charged throughout the State of Oklahoma, and the prevailing rates (from 0 to 100 miles) were shown to be as follows:

<i>Miles</i>	<i>Rate</i>
0 — 10 inc.	\$.15
11 — 20 . . . . .	.20
21 — 30 . . . . .	.25
31 — 40 . . . . .	.30
41 — 50 . . . . .	.35
51 — 60 . . . . .	.40
61 — 70 . . . . .	.45
71 — 80 . . . . .	.50
81 — 90 . . . . .	.55
91 — 100 . . . . .	.60

The Commission finds that the charges complained of are excessive and that the defendant company ought to reduce its charges, and for long distance service hereafter furnished by the defendant company the maximum charge shall be in accordance with the table above set out.

The Commission does not approve the above schedule as showing a just charge in all cases or even the present case. The same undoubtedly will afford the defendant company ample remuneration and upon more careful investigation might be found to be too high.

Wherefore, the premises considered, and the Commission being fully advised,

It is considered, ordered and adjudged, That the defendant, Purcell Telephone Company, be, and is hereby, required to reduce its charges for toll service between Purcell and the other points mentioned, to-wit: Wayne, Washington and Rosedale, to 15 cents for a three-minute conversation, and charges for service generally are ordered to be made in accordance with the schedule above set out. For a conversation extending over a period of more than three minutes, the charge shall be at the same rate, that is to say, for each minute or fraction thereof above three minutes, one-third shall be added to the three-minute charge.

Done at Oklahoma City, Oklahoma, this the twenty-eighth day of August, 1915.

PENNSYLVANIA.

The Public Service Commission.

IN THE MATTER OF A FORM TO BE PRESCRIBED AND ISSUED FOR
USE BY PUBLIC SERVICE COMPANIES IN FILING CERTIFI-
CATES OF NOTIFICATION ON OR PRIOR TO THE DATE OF ISSU-
ANCE OF ANY TRUST CERTIFICATES, BONDS, NOTES OR
OTHER EVIDENCES OF INDEBTEDNESS OR OTHER SECURI-
TIES PAYABLE AT PERIODS OF MORE THAN TWELVE
MONTHS (NOT INCLUDING STOCKS).

General Order.

Dated July 6, 1915.

**Form Prescribed for Use in Filing Certificates of Notification for Bonds,
Notes and Other Securities.**

ORDER.

The subject of a form to be prescribed and issued for use by public service companies in filing certificates of notification on or prior to the date of issuance of any trust certificates, bonds, notes, or other evidences of indebtedness, or other securities, payable at periods of more than twelve months (not including stocks), being under consideration, the following order was entered:

It is ordered, That the form of certificate of notification with the instructions pertaining thereto, embodied in printed form to be hereafter known as *Certificate of Notification for Trust Certificates, Bonds, Notes, or Other Evidences of Indebtedness, or Other Securities*, a copy of which is now before the Commission, be, and the same is hereby, approved; and that a copy thereof duly authenticated by the Secretary of the Commission be filed in its archives in the custody of the Secretary, and a duplicate thereof in the office of the Bureau of Accounts and Statistics, and that each of said copies so authenticated and filed shall be deemed an original record thereof.

It is further ordered, That the said form of certificate of notification with the instructions pertaining thereto be and the same is hereby prescribed for use by public service companies subject to the provisions of the Public Service Company Law, approved July 26, 1913, in filing with this Commission certificates of notification on or prior to the date of issuance of any trust certificates, bonds, notes, or other evidences of indebtedness, or other securities, payable at periods of more than twelve months (not including stocks), and that each and every such public service company, its receiver or other officer appointed by any court to have charge of the affairs of such public service company, be required to use and set forth the facts and information required in the said form, and to follow and obey the said instructions in filing certificates of notification on or prior to the date of issuance of any trust certificates, bonds, notes, or other evidences of indebtedness, or other securities, payable at periods of more than twelve months (not including stocks), according to the provisions of the Public Service Company Law, approved July 26, 1913, and that copies of the said form be sent to each and every public service company upon request.

It is further ordered, That August 1, 1915, be, and is hereby, fixed as the date on which the said form and the said instructions shall become effective.*

July 6, 1915.

THE BLAIRSVILLE TELEPHONE COMPANY v. JOHNSTOWN TELEPHONE COMPANY AND WINDBER TELEPHONE COMPANY.

Complaint Docket No. 373.

Decided July 22, 1915.

Interchange of Service Not Ordered.

Complainant alleged that the respondent companies refused to complete connections between the subscribers of the complainant and of the

*A similar order applying to stocks was issued August 13, 1915, to be effective September 1, 1915.

Windber company through the Johnstown Telephone Company, although there was no other means of communication between the complainant's subscribers and the subscribers of the Windber company, and although neither the lines of the complainant nor of the respondent formed a continuous connection between the localities in question.

The complainant had connection with the Johnstown Telephone Company and the latter had connection with the Windber company, and without any change of lines it would be possible to make connection between the subscribers of the complainant and those of the Windber company, but the Windber company refused to make said connection. The Johnstown company was willing to make the connection but was precluded by an agreement which it had made with the Windber company.

The Windber company did allow at least one other company, which was connected with the Johnstown company, namely the Somerset Telephone Company, to send messages to subscribers of the Windber company.

The Windber company connected with The Bell Telephone Company of Pennsylvania, and by this connection reached Blairsville and vicinity. Many of the subscribers of the Blairsville Telephone Company had signed a petition expressing their desire for the establishment of the connection.

Held: That the Commission might order and require connections made and facilities supplied and through conversations transmitted where the lines of one telephone company form with the lines of another telephone company a continuous line of communication between different localities, or where these lines could be made continuous by the construction and maintenance of suitable connections between the several lines at common points;

That these two propositions are subject to the qualifications that said order for connection between the different localities should be made only (a) where efficient service could be obtained without injustice to either company and without substantial impairment or detriment to the service to be rendered by either company, and when the necessity exists therefor; and (b) where the different localities cannot be communicated with or reached by the lines, facilities or connections of either company alone and where such service is not already established or provided for; and (c) should communication by direct single line or joint continuous line of some company or companies exist, only where public convenience and necessity demand the linking of the two new companies whose lines are continuous when joined together, and neither of which reaches both localities by its own lines or facilities or connections;

That as the Windber company had through its facilities and connections with the Bell company a connection and interchange of service between the localities served by the complainant and the localities served by the respondent Windber company, and as there was no evidence that public necessity existed for the establishment of a new line between these two localities, the petition should be dismissed;

That as to the Somerest company, the evidence does not show that this company is in a like position with the complainant either as to location or the requirement of subscribers, and hence no showing was made that the complainant was being discriminated against.

REPORT.

MONAGHAN, *Commissioner*:

The Blairsville Telephone Company, on March 17, 1915, filed a complaint against the Johnstown Telephone Company and the Windber Telephone Company, setting forth that the complainant is a public service corporation, operating a telephone line in the counties of Indiana and Westmoreland, and having its principal office at Blairsville, Pennsylvania; that the Windber Telephone Company, one of the respondents, is also a public service corporation, engaged in the business of operating a telephone line in the county of Somerset, with its principal office at Windber, in that county; and that the Johnstown Telephone Company, the other respondent, is also a public service corporation, operating a telephone line in the county of Cambria, with its principal office at Johnstown, Pennsylvania.

It is alleged that the complainant, The Blairsville Telephone Company, is connected with the Johnstown Telephone Company, that the latter company has connection with the Windber Telephone Company, and that without any change of lines it is possible to make complete connections between the subscribers of The Blairsville Telephone Company and the Windber Telephone Company through the Johnstown Telephone Company. The complainant states that the respondent companies have refused to permit such connections when requested so to do and that the complainant company has no other means of communication by which it can serve a large number of its subscribers than the lines of the respondent companies.

The complainant further alleges that the lines of neither the company complainant nor the respondents' lines form a continuous connection between the different localities specified, and claims such right of connection under Para-

graph 6 of Section 1 of Article 2 of The Public Service Company Law.

The Johnstown Telephone Company in its answer prays that the petition be granted and states that it is willing to grant the connection asked for but that it has made an agreement with the Windber Telephone Company by which it is precluded from exchanging traffic with the complainant or to any other points east, west and north on the lines of the Johnstown Telephone Company.

In an informal answer the Windber Telephone Company denies that it has refused the connection asked for and sets forth that it has connection with the Blairsville district through The Bell Telephone Company's lines, but that the traffic produced is of such small volume as to be almost negligible.

At the hearing held in this matter the general manager of the complainant company was the only witness, and from the testimony produced it appears that The Blairsville Telephone Company operates lines supplying 600 to 700 subscribers, 90 per cent. of whom are not subscribers to The Bell Telephone Company, in Indiana and Westmoreland counties, with its principal office at Blairsville, Indiana County, and that it has interchange of service with the Johnstown Telephone Company, operating in Indiana and Somerset counties, and this company, in turn, has direct communication and interchange of service with the Windber Telephone Company.

The Somerset Telephone Company operates in Somerset and Cambria counties and connects with the Johnstown Telephone Company, and through it with the Windber Telephone Company.

The Windber Telephone Company connects with The Bell Telephone Company, with which company it operates a joint exchange at Windber, and by this connection reaches Blairsville and its vicinity, where the Bell company has about 175 subscribers.

The testimony discloses that the connection asked for could be made without any change of lines or any additional

expense of any description, as The Blairsville Telephone Company now connects with the Johnstown Telephone Company and that company connects with the Windber Telephone Company, but this connection the Windber Telephone Company refuses to permit for the reason that it is already furnishing service to Blairsville through its connection with The Bell Telephone Company.

The complainant presented a petition signed by a large number of the subscribers of The Blairsville Telephone Company, requesting that this Commission order connection for interchange of service between The Blairsville Telephone Company and the Windber Telephone Company through the lines of the Johnstown Telephone Company, and that such an exchange of service would greatly aid the subscribers at Blairsville in their homes and their business.

Article 2, Section 1, Paragraph 5, of the Act of July 26, 1913, provides that it shall be the duty of every public service company

“ If a telephone corporation, or person engaged in the telephone business, whose lines, together with the lines of another telephone corporation, or person engaged in the telephone business, form a continuous line of communication between different localities, which are not reached by lines, facilities, or connections of either alone, and could be made to do so by the construction and maintenance of suitable connections between the several lines at common points, for the transmission of conversation between different localities, to jointly arrange for the interchange and transfer of conversations at such common points when it can reasonably be done, and efficient service can be obtained without injustice to either company and without substantial impairment or detriment to the service to be rendered by either company, and when necessity exists therefor, in order to supply through traffic communication between different localities not otherwise provided for by the companies in question, or either of them; and shall operate and conduct a joint through traffic over the several lines so connected, and shall make the proper rules and regulations governing the same, and shall establish just and reasonable rates and charges for the joint through service thereby rendered, and shall make among themselves an equitable apportionment of the costs and revenues appertaining to the joint facilities and service.”

And under Article 5, Section 9 of the said Act, prescribing the powers and duties of this Commission, it is provided:

"Whenever the Commission shall find that there are any two or more telephone companies whose lines form a continuous line of communication, or could be made to do so by the construction and maintenance of suitable connections between the several lines at common points, for the transmission of conversations between different localities which are not reached by the lines of either company alone, and that such connections and facilities for the through transmission of conversations, jointly, over the several lines, can reasonably be made, and an efficient service can be obtained without injustice to either company, and without substantial impairment or detriment to the service to be rendered by either company, and that a public necessity exists therefor; or shall find that any two or more telephone companies have failed to establish just and reasonable joint rates or charges for through service, by or over their several lines so connected, and that such joint rates or charges ought to be established, in order to supply a through traffic and communication between different localities not otherwise provided for, or proffered by the companies in question, or either of them,—the Commission may by its order require that such connection be made and facilities supplied, and that through conversations be transmitted thereby: * * *."

The language of the several sections above quoted is very plain, and to the effect that the Commission may order and require connections and facilities supplied and through conversations transmitted thereby, where a telephone corporation, or person engaged in the telephone business, whose lines, with the lines of another telephone corporation (1) form a continuous line of communication between different localities; (2) or could be made continuous by the construction and maintenance of suitable connections between the several lines at common points, for the transmission of conversations between different localities. But these two propositions are subject to the qualifications (a) that said order for connections between different localities shall be made only where efficient service can be obtained without injustice to either company, and without substantial impairment or detriment to the service to be rendered by either company, and when the necessity exists therefor; and (b) where the different localities cannot be communicated with or reached by the lines of either company alone, and where such service is not already established or provided for.

It is therefore very clear that to enable the Commission to act it must be established (1) that neither one of the companies has lines or facilities for connections which communicate with or reach both of the localities; and (2) that the two companies have lines which either form or can be connected so as to form a continuous line between two localities; and that (if there is already communication by direct single line, or joint continuous line of some company or companies,) it should appear from the evidence that public necessity existed for the linking of the two new companies whose lines are continuous when joined together, and neither of which reaches both localities by its own line or its facilities or connections.

The definition of the term "localities" under this section of the Act must be determined by the particular circumstances of each case. In this case, in the opinion of the Commission, the term "locality" with respect to The Blairsville Telephone Company means the immediate territory served by The Blairsville Telephone Company in Indiana County and in Westmoreland County; and that the other "locality" in this case is that of the Windber Telephone Company, which includes the territory served by that company in the vicinity of Windber in Somerset County. From the testimony these two principal exchanges of The Blairsville Telephone Company and the Windber Telephone Company are at a distance of 33 miles from each other.

We have, therefore, the proposition of the Windber Telephone Company, having through its facilities and connections with The Bell Telephone Company a connection and interchange of service with both localities. There is no evidence to indicate that the Windber Telephone Company through its connections with The Bell Telephone Company is not providing adequate service to the locality of The Blairsville Telephone Company. Nor is there any evidence that a public necessity exists for the establishment of a new line between these two localities. It is true that a petition

has been presented by a number of the subscribers of The Blairsville Telephone Company asking for the connection through the Johnstown Telephone Company with the Windber Telephone Company, but such petition does not show or assert any public necessity for that service. It may be convenient for the subscribers of The Blairsville Telephone Company to have the additional facility, but this Commission has only the power granted under the Act of Assembly by which it was created, and the power to compel connection between telephone companies is limited by the two sections of the Act to which we have referred. Of course, if there was affirmative evidence that the Windber Telephone Company with its facilities and connections with The Bell Telephone Company was not furnishing efficient or adequate service between Windber and Blairsville, a different question would arise.

There is an intimation in this case that the Somerset Telephone Company which is connected with the Johnstown Telephone Company is furnishing service through the Johnstown Telephone Company with the Windber Telephone Company, and we assume that this intimation was made for the purpose of showing that the Windber Telephone Company is giving undue preference to the Somerset Telephone Company. But it does not appear from the evidence that the Somerset Telephone Company is in like position with The Blairsville Telephone Company, either as to location or as to the requirements of the subscribers. Indeed, the Somerset Telephone Company is in an entirely different locality from The Blairsville Telephone Company, and it may be for all that appears in the evidence, that its connection with the Johnstown Telephone Company is perfectly just, proper and reasonable, without the effect of giving any undue preference as against The Blairsville Telephone Company, or any other company similarly situated.

We have come to the conclusion that since the two localities are reached by the lines, facilities and connections of the respondent, the Windber Telephone Company, since

service is already provided between the localities in question; and as there is no evidence of any undue preference granted to any company, the complaint should be dismissed.*

FRANK BABBITT, BURGESS OF CRANESVILLE, *v.* ALBION ELECTRIC LIGHT AND POWER COMPANY, THE BELL TELEPHONE COMPANY OF PENNSYLVANIA, AND ALBION TELEPHONE COMPANY.

Complaint Docket No. 340.

Decided August 13, 1915.

Approval by Commission of Contract Made Prior to Effective Date of The Public Service Company Law Not Required — Commission Without Jurisdiction to Pass Upon Rights of Companies to Use Streets.

Complaint was made that the respondent, Albion Electric Light and Power Company, by virtue of a contract with The Bell Telephone Company of Pennsylvania for the joint use of the latter's poles, was unlawfully occupying the streets of the borough of Cranesville in that it had not obtained any franchise to occupy these streets, and furthermore that the contract for the joint use of the Bell company's poles had not been approved by the Commission. Complaint was also made that the Albion Telephone Company was also violating the law by its present use and occupations of the streets of said borough of Cranesville.

Held: That as the contract between the Albion Electric Light and Power Company and The Bell Telephone Company, was made prior to the effective date of The Public Service Company Law, the approval of the Commission was not required;

That the complaint that the respondents, Albion Electric Light and Power Company and Albion Telephone Company, had not obtained the franchises requisite to enable them to lawfully use the streets of the borough involves questions of the corporate capacities of those companies and the franchises possessed by them; that these are legal questions, the determination of which is not within the jurisdiction of the Commission.

REPORT.

RILLING, Commissioner:

The complainant in this case is Frank Babbitt, the burgess of Cranesville Borough in Erie County.

* Copy of order omitted.

The respondents are the Albion Electric Light and Power Company, the Albion Telephone Company and The Bell Telephone Company of Pennsylvania — three public service companies.

The complaint in this case is somewhat vague and indefinite. The main charge, however, may be stated to be that the Albion Electric Light and Power Company by virtue of a contract with The Bell Telephone Company for the joint use of the latter's poles, made since The Public Service Company Law went into effect, is unlawfully occupying with its facilities the streets of Cranesville Borough for its business purposes, without obtaining from the borough any franchise so to do, and without having the approval of The Public Service Commission to said contract, as required by The Public Service Company Law, and further, that the Albion Telephone Company is also violating the law by its present use and occupation of the streets of the said borough in carrying on its business therein.

The answer of the several respondents is a substantial denial of the complainant's complaint.

From the evidence offered in this case it appears that The Bell Telephone Company, having a franchise to use and occupy the streets for the purpose of rendering telephone service to the public in Cranesville Borough, did, by a contract duly consummated prior to January 1, 1914, when The Public Service Company Law went into effect, permit the use of its poles to the Albion Electric Light and Power Company. This contract having been made prior to January 1, 1914, the approval of The Public Service Commission thereto is not required. The complaint, therefore, that said contract has not been approved by the Commission, is without merit.

As to the further charge in the complaint that the respondents, to-wit, the Albion Electric Light and Power Company and the Albion Telephone Company, have not obtained from the borough the street franchises requisite to enable these companies to lawfully use and occupy the streets, and that these companies are unlawfully usurping

such street franchises, we are of the opinion that such allegation involves questions of the corporate capacity and franchises possessed by these companies in said borough, as distinguished from a violation of any of the provisions of The Public Service Company Law, and for that reason we think they are legal questions of such a character that their determination is not within the scope of the jurisdiction conferred and duties imposed by the Act of Assembly upon the Commission under the complaint in the present case. The questions of law involved in the application for a certificate of public convenience in the case of the *Petition of the City of Williamsport for the Approval of a Street Lighting Contract with the Citizens Electric Company*, Municipal Contract Docket No. 17-1915, were of a different nature and arose under provisions of The Public Service Company Law different from those applicable to the present complaint, and what we there said with regard to the function of the Commission concerning the determination of legal questions is in nowise intended to be altered or modified. The decision of the Commission in the case cited has no application to the present complaint. For these reasons we are of the opinion that the complaint should be dismissed, and it will be so ordered.

ORDER.

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties and full investigation of the matters and things involved having been had, and the Commission having on the date hereof made and filed of record a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

Now, to-wit, August 13, 1915,

It is ordered, That the complaint in this case be, and the same is hereby, dismissed.

SOUTH DAKOTA.

Board of Railroad Commissioners.

IN THE MATTER OF AN INVESTIGATION INTO TELEPHONE FACILITIES AND TELEPHONE SERVICE FURNISHED IN CONNECTION THEREWITH BY THE DAKOTA CENTRAL TELEPHONE COMPANY, FARMERS AND MERCHANTS TELEPHONE COMPANY OF AVON, SPRINGFIELD TELEPHONE COMPANY, AND OTHER TELEPHONE COMPANIES OPERATING EXCHANGE AND RURAL LINES AT AND IN THE VICINITY OF KINGSBURY, AVON, SPRINGFIELD AND OTHER TOWNS TRIBUTARY THERETO.

F-200.

Decided June 19, 1915.

**Discrimination in Switching Rates in Favor of Particular Telephone Company or in Favor of Particular Class of Subscribers
Eliminated — Anti-Pass Law Discussed.**

The Board on its own initiative entered upon an investigation into the telephone situation at Avon and Springfield.

By a contract between the Farmers and Merchants Telephone Company and the Springfield Telephone Company, the rural subscribers of each company had telephone service and connection free of charge with both the rural and city subscribers of each company, and the city subscribers of each company had connection and service free of charge with the rural subscribers of each company.

The German Telephone Company had connection with both the Farmers and Merchants company and the Springfield company, paying the former \$50.00 per year for switching, and paying the latter \$12.00 per year for a similar service.

Held: That the Farmers and Merchants company and the Springfield company in furnishing their rural subscribers free service with all other subscribers, including city, town and rural, of both companies, while furnishing their town and city subscribers free service only with the rural subscribers of both companies, and while charging the German Telephone Company a switching rate for connection with either their rural, city or town subscribers, were favoring their own subscribers over the German company's subscribers and were favoring their rural sub-

scribers over their town and city subscribers, and consequently were violating the terms of the Anti-Pass Law, as that statute forbids a telephone company to furnish any service to any person or other telephone company upon any other terms than of absolute equality;

That as the Farmers and Merchants company and the Springfield company made no change in rates when they contracted for interchange of service, and as the rural subscribers were given, without extra charge, service with the city, town and rural subscribers of both companies, while the city and town subscribers were given merely free service with the rural subscribers of both companies, there was discrimination by each company in favor of its rural subscribers since the same additional free service was not given to all subscribers;

That the provisions of the contract between the Farmers and Merchants company and the Springfield company should be disapproved, and the companies should be required to enter a new contract for the switching of messages from such of their rural lines as desire switching connection at the second exchange at a fixed rate of compensation for each telephone instrument per month, the amount of compensation to be left to the agreement of the companies but not to exceed 25 cents per telephone per month, and in case of inability of the companies to agree, to be fixed by the Board;

That the Farmers and Merchants company and the Springfield company by granting free interchange of switching service to their patrons and charging the German Telephone Company \$50.00 and \$12.00 respectively, for the same service, were guilty of discrimination;

That the rates exacted from the German Telephone Company should be based on a fixed charge per telephone as provided by statute.

Free Service Held Unlawful.

Held: That under the laws of South Dakota telephone companies are prohibited from furnishing free service, and they may not discriminate by furnishing free service to one company or its subscribers while charging other telephone companies or their subscribers for the same or a similar service.

APPEARANCES:

Mr. F. D. Wicks, attorney, and *Mr. Theodore Berndt*, manager, for the Farmers and Merchants Telephone Company.

Mr. Timothy Holleman, owner and manager, for the Springfield Telephone Company.

Mr. Oliver E. Sweet, attorney, for the Board of Railroad Commissioners.

The Telephone company operated by the Mennonites, known as the German Telephone Company, did not appear.

FINDINGS AND CONCLUSIONS.

In this cause the Farmers and Merchants Telephone Company of Avon and the Springfield Telephone Company of Springfield each filed, pursuant to the provisions of Section 4 of Chapter 289 of the Session Laws of 1909, as amended by Chapter 218 of the Session Laws of 1911, a copy of a contract under date of September 28, 1914, and because of certain provisions in said contract and information as to telephone practices of these and other telephone companies operating in the vicinity of Avon and Springfield, this Board, on its own initiative and without formal pleading, entered upon an investigation into the telephone situation in the localities mentioned. A hearing was held at Tyndall before Commissioner Murphy on April 23, 1915.

The record discloses that on September 28, 1914, the Farmers and Merchants Telephone Company of Avon and the Springfield Telephone Company of Springfield entered into a contract for telephone service, containing, among others, provisions reading as follows:

"It is mutually agreed by and between the parties hereto that all the rural subscribers of the party of the first part shall have the right and privilege to telephone to all the subscribers of the second part over the lines of either party, and the subscribers of the first party having telephones in town can telephone to the rural subscribers of the party of the second part.

"For the consideration hereinbefore mentioned, it is further agreed by and between the parties hereto, that the rural subscribers of the party of the second part shall have the right and privilege to telephone to all the subscribers of the party of the first part over the lines of either party, and the subscribers of the second party having telephones in town can telephone to the rural subscribers of the party of the first part.

"It is understood and agreed that this agreement is mutual and that no extra charges shall be made by either of the parties hereto to the subscribers of either party."

Under this contract, the rural subscribers of each company have telephone connections and service free of charge with all subscribers, both rural and city or town, of both companies, while the city or town subscribers have tele-

phone connection and service free of charge with the rural subscribers of both companies.

For the purposes of this case, because of the want of certainty in the record as to the number of telephone instruments in operation by each company, page 12 of the annual reports for the year ending April 30, 1914, of both these companies are attached to, and hereby made a part of, the record. From these annual reports it appears that the Farmers and Merchants Telephone Company of Avon have 250 instruments in service, divided as follows:

Individual business	33
Individual residence	30
	<hr/>
	63
Rural party line	187
	<hr/>
	250

The Springfield Telephone Company has in service 300 telephone instruments apportioned as follows:

Individual business	24
Individual residence	75
Free or reduced rate (employees).....	2
Combined residence and business.....	44
	<hr/>
	145
Rural party line.....	155
	<hr/>
	300

The rates of the Farmers and Merchants Telephone Company are as follows:

Individual business per month.....	\$1 50,	per annum	\$18 00
Individual residence per month.....	1 00,	per annum	12 00
Rural party line per month.....	1 50,	per annum	18 00

The rates of the Springfield Telephone Company are as follows:

Individual business per month.....	\$1 50,	per annum	\$18 00
Individual residence per month.....	1 00,	per annum	12 00
Combined residence and business per month.	2 50,	per annum	30 00
Rural party line per month.....	1 00,	per annum	12 00

A telephone company operated by the Mennonites, known as the German Telephone Company, has connections with both the Farmers and Merchants Telephone Company of Avon and the Springfield Telephone Company. The Farmers and Merchants Telephone Company charges this German Telephone Company \$50.00 a year for switching its messages, while the Springfield Telephone Company charges this German Telephone Company for the switching of its messages \$12.00 per annum.

Three questions are presented on this record:

First: Are the Farmers and Merchants Telephone Company of Avon and the Springfield Telephone Company of Springfield violating the provisions of Chapter 221 of the Session Laws for the year 1907, known as the Anti-Pass Law?

Section 1 of that act, eliminating provisions not pertinent in this case, reads as follows:

"No person, association, co-partnership, * * * common carrier, or corporation, shall issue or give or offer to give to any person, any free ticket, pass, frank or privilege of any kind, which is withheld from any person for the * * * transmission or communication of any message or information for use within this State, nor give, issue or sell any such ticket, pass, frank, or privilege to any person for a less or different sum or consideration than is charged to any other person for a like or similar ticket, pass, frank, privilege or service."

Under the plain and quite unambiguous provisions of this section, there is little necessity for argument or comment. It positively and unequivocally forbids any telephone company to furnish any service to any person or other telephone company on any other terms than of absolute equality. A telephone company may not under its provisions accord free service to any person or telephone company and withhold this privilege to all others. If the service furnished is a free service, and that is permissible under our statutes, then the telephone company must grant this free service to all. If the service, however, is granted for a consideration, the charging of a less or different sum or consideration for a like or similar privilege or service is posi-

tively forbidden. In order there might be no doubt of its intention, the legislature in Section 6 provided that for any violation of its provisions, the punishment should be by a fine of not less than \$200 nor more than \$1,000, or by imprisonment in the penitentiary not less than one nor more than five years, or by both such fine and imprisonment. These companies are furnishing free service to their rural subscribers which they are withholding from their town subscribers and which they are likewise withholding from the German Telephone Company or its subscribers, and they are charging the German Telephone Company or its subscribers, a different sum or consideration for the same service.

The service received by their rural subscribers is the switching of telephone messages through the central offices or exchanges to all subscribers, both city or town and rural, of both companies. The service received by their city or town subscribers is the very same, switching of messages through the central offices or exchanges to rural subscribers. The service received by the German Telephone Company or its subscribers is the switching of telephone messages to and from its lines. This service is exactly the same to all. The same mechanical operation is necessary, and the same telephone lines are used and the service is identical and similar throughout. There is little necessity for further elaboration—the very contract under discussion, the provisions of which are set forth herein, clearly, according to its terms, violates the provisions of Section 1 of the Anti-Pass Law, and the arrangement for free service under this contract, while charging for the same service to the German Telephone Company, likewise is violative of the provisions of Section 1 of the Anti-Pass Law.

Second: Does the contract of September 28, 1914, provide in express terms for discrimination between persons or telephone companies?

Section 10 of Chapter 289 of the Session Laws of 1909, as amended by Chapter 218 of the Session Laws of 1911, provides as follows:

"No person or telephone company shall unjustly discriminate either between persons or telephone companies in the switching, transfer or delivery of messages * * *. Any person or telephone company and any officers or agent of any telephone company violating any provision of this section shall, upon conviction thereof, be punished by a fine of not more than \$200."

In Section 6 of Chapter 207 of the Session Laws of 1911, we find a provision as follows:

"If any common carrier, subject to the provisions of this article, shall directly or indirectly, by any special rate, rebate, drawback or other device, charge, demand, collect or receive from any person or persons, a greater or less compensation for any service rendered or to be rendered in the transportation of * * * messages by telephone * * * than it charges, demands, collects or receives from any other person or persons for doing for him or them a like and contemporaneous service, * * * such common carrier shall be deemed guilty of unjust discrimination which is hereby prohibited and declared to be unlawful."

Section 7 of the same chapter also provides:

"It shall be unlawful for any common carrier subject to the provisions of this article to make or give any preference or advantage to any particular person, company, firm, corporation or locality, or any particular description of traffic in any respect whatever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic to any prejudice or disadvantage in any respect whatsoever * * *. All common carriers subject to the provisions of this article shall, according to their respective powers, afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines and for the receiving, forwarding and switching * * * of messages by telephone to and from their several lines, and to and from other lines and places connected therewith, and shall not discriminate in their accommodations, rates and charges between such connecting lines."

The Farmers and Merchants Telephone Company have one exchange at Avon and another at Dante, and rural telephone lines radiating from each, while the Springfield Telephone Company has but the one exchange at Springfield and rural telephone lines connected therewith.

The record does not disclose the rate charged by these companies for the transmission of messages between their town or city subscribers in Springfield, Avon and Dante.

The rural subscribers in addition to having communication with the rural subscribers of both companies are permitted to have communication with the town or city subscribers, while the town or city subscribers are limited to communication with the rural subscribers of both companies. Does this constitute a discrimination in favor of the rural subscribers and against the town or city subscribers? Unquestionably it does, and this very practice is expressly prohibited by Section 10 of Chapter 289 as amended, as well as by Sections 6 and 7 of Chapter 207. These companies are furnishing a service to their rural subscribers which they are not furnishing to the city or town subscribers. At the time of entering into this contract, the rates being exacted by these companies for their rural party line service were the same as now — nothing was added for the extended service — nothing was included for the additional service given by them to their rural subscribers in the way of permitting communication with the city or town subscribers in Springfield, Avon and Dante. All subscribers of both these companies, city or town and rural, were paying identically the same rates now being exacted, but at the time of entering into this arrangement the rural subscribers were preferred over the town subscribers, in that they were given, not only connection with each other, but with the town or city subscribers as well, while the city or town subscribers were limited to a connection with the rural subscribers. Our statute, Section 8 of Chapter 289 on the subject of switching messages, provides as follows:

“ Every telephone company shall connect its lines with the lines of any other telephone company doing business in the same vicinity that makes application therefor, and shall afford all reasonable and proper facilities for the interchange and switching of messages between lines, for reasonable compensation and without discrimination, and under such rules and regulations as the Board of Railroad Commissioners may prescribe. *Provided*, That messages originating on any line shall have preference over messages originating on competing lines. *Provided*, That the maximum charges for switching shall not exceed 25 cents per month for each instrument on any rural party line so connected.”

This statute contemplates that the switching of messages between telephone lines shall be without discrimination, subject to such rules and regulations as this Board may prescribe; contemplates a monthly charge based on the telephone instrument or station as a unit for the switching of messages for rural party lines, and reserves a preference to a telephone company in favor of messages originating on its own line. Under this section the charge must not exceed 25 cents per month or \$3.00 per year for each telephone instrument for switching messages for any rural party line.

From the record it appears that the Springfield Telephone Company desires switching connection at the Avon exchange for only a portion of its lines, in all 68 out of 300 subscribers. Mr. Holleman testified:

"There are only three lines that I would like to have connect with Avon because they run up northwesterly from Springfield, one straight west, and the other northwest, and the other north and then west. There are about 68 subscribers in all that would like to have that privilege; let me see, 22, 17, and 15 and 14, yes, 68."

The provisions of the contract between the Farmers and Merchants Telephone Company of Avon and the Springfield Telephone Company of Springfield are disapproved, and the order in this case will require these telephone companies to enter into a new contract for the switching of messages from such of their rural lines as desire switching connection at the second exchange at a fixed rate of compensation for each telephone instrument per month. The amount of the compensation will be left to the agreement of the companies. It must not exceed 25 cents for each telephone instrument, and in case of their inability to agree on the compensation, this Board will fix the amount.

Third: Are the Farmers and Merchants Telephone Company of Avon and the Springfield Telephone Company of Springfield by granting free interchange of switching services to their patrons, and charging the German Telephone

Company \$50.00 and \$12.00 per annum respectively for the same service, guilty of discrimination as denounced by our statutes?

In view of what has been heretofore said, and of the provisions of the laws above set forth, the answer is obvious. The laws of this State require every common carrier to treat all patrons alike. A common carrier under the laws of this State may not make one charge to one person or firm and another charge to another person or firm. A carrier may not furnish free service to one and make a charge for this same service to another — all must be treated with equality.

From the record it appears that the German Telephone Company has about 29 telephone instruments in operation on its lines and on the basis of a \$50.00 per annum charge paid to the Farmers and Merchants Telephone Company of Avon, it is receiving its switching services with that company for about 14½ cents per telephone instrument per month, while the Springfield Telephone Company, on the basis of its annual charge of \$12.00, is receiving about 4½ cents per month for each telephone instrument. In the general investigation conducted by this Board in June and July, 1913, it was found that many telephone companies were making a flat charge of so many dollars per annum for switching service. The charges ranged all the way from \$2.00 to \$30.00. In this case we have one charge of \$12.00 and another of \$50.00. In still other instances, the switching service was being conducted on the basis of a rate of 5 cents per message and it was disclosed that on the 5-cent message basis the provisions of Section 8 were being violated, in that many telephone subscribers paid for more than five messages per month. On the basis of a message rate of 5 cents, five messages consume the monthly switching charge fixed by the statute, and to the extent of the amount paid in excess of 25 cents per month, there was a violation of the provisions of Section 8. In order to obviate this message rate and its consequent violation of the provisions of the law, and the flat rate of so many dollars per

annum, this Commission ruled in that general investigation, in its opinion* filed August 21, 1913, that the statute contemplated and it would require rates for switching services to be quoted at a certain definite fixed charge for each telephone instrument on a rural party line receiving this switching service. It also held that it would not be possible to put some subscribers on a rural party line on a switching basis and others not. In other words, it could not be left optional with the subscribers of a particular line to have service on a switching basis or to do without because of operating reasons which would make it impossible to police the messages, and that whenever a majority of the subscribers on any line desired switching connections on this monthly switching basis, all subscribers on the line would receive the service and the telephone company owning and operating the rural line would be required to pay to the telephone company owning and operating the exchange the agreed switching fee for each telephone instrument on the line, and that this switching fee should be included in the rental rate charged the subscriber. In this instance, therefore, the order will provide that the rates exacted by the Farmers and Merchants Telephone Company and the Springfield Telephone Company from the German Telephone Company be based on a fixed charge for each telephone instrument on the connected lines of the German Telephone Company, and that the discrimination as against this telephone company and its subscribers shall be eliminated by requiring the Farmers and Merchants Telephone Company of Avon and the Springfield Telephone Company of Springfield to go onto a switching basis under the statute.

There is one other question in this case as yet undecided, although it has been passed upon in former decisions, and it is whether under our statute telephone companies may furnish service free of charge?

Our statute contemplates that every common carrier doing business in this State (under Chapter 218 of the Laws

*See Commission Leaflet No. 22, p. 974.

of 1909 and Section 1577 of our Civil Code, telephone companies are common carriers) shall, before commencing to do business, file with the Board of Railroad Commissioners complete schedules of rates and copies of all contracts of every description with other telephone companies affecting in any manner the telephone business, and when these rates have once been filed, the carrier is prohibited under the statute from charging any other or different rate than as specified in its schedule of rates on file with the Board. It is the policy of our statutes that services rendered by common carriers shall be paid in cash and in cash only, and free services are, therefore, prohibited. This is also the theory upon which our Anti-Pass Law was framed, and it was in the passage of that Act the intention of the legislature to absolutely prohibit free service, and it, therefore, prohibited the furnishing of any free service to one which was withheld from another on the theory that as a carrier must have revenue, it could not furnish free service to one without furnishing free service to all, which would of itself destroy the company. It was for this same reason also that in Section 1 of that Act there is contained a prohibition against the furnishing of service to one at a less or different compensation than to another. Unquestionably, under the laws of this State, telephone companies are prohibited from furnishing free service, and they may not discriminate by furnishing free service to one telephone company or its subscribers, and charge other telephone companies or their subscribers for the same or a similar service.

ORDER.

In this proceeding, this Board having made a complete investigation, and on this day filed its report containing its findings and conclusions, and being fully advised in the premises, and sufficient cause for this order appearing:

It is, therefore, ordered, considered and adjudged,

- a. That the Farmers and Merchants Telephone Company of Avon immediately cease and discontinue its practice of granting free telephone connection and service to

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the Springfield Telephone Company, its subscribers and patrons.

b. That the Springfield Telephone Company immediately cease and discontinue its practice of granting free telephone connection and service to the Farmers and Merchants Telephone Company of Avon, its subscribers and patrons.

c. That the Farmers and Merchants Telephone Company of Avon, establish, publish and put into effect for the switching of messages to and from its lines, to and from the lines of the German Telephone Company and the Springfield Telephone Company, switching rates for the switching of messages at its exchanges at Avon and Dante on the basis of a fixed charge which shall not exceed 25 cents per month for each telephone instrument on the rural party lines connected to its exchanges where the rural line is connected with but one exchange, and which shall not exceed $18\frac{3}{4}$ cents per month where the rural party telephone line is connected with two exchanges. In which event, the total switching charge shall be on the basis of $37\frac{1}{2}$ cents per month for each telephone instrument, or $18\frac{3}{4}$ cents per month to each exchange, and which shall be included within the rental rate charged to subscribers.

d. That the Springfield Telephone Company of Springfield, establish, publish and put into effect for the switching of messages to and from its lines, to and from the lines of the German Telephone Company and the Farmers and Merchants Telephone Company, switching rates for the switching of messages at its exchange at Springfield on the basis of a fixed charge which shall not exceed 25 cents per month for each telephone instrument on the rural party lines connected to its exchanges where the rural line is connected with but one exchange, and which shall not exceed $18\frac{3}{4}$ cents per month where the rural party telephone line is connected with two exchanges. In which event, the total switching charge shall be on the basis of $37\frac{1}{2}$ cents per month for each telephone instrument, or $18\frac{3}{4}$ cents per month to each exchange, and which shall be included within the rental rate charged to subscribers.

e. That the practice of quoting, charging, collecting and receiving a flat rate in dollars per annum for the switching of all messages from and to the lines of the German Telephone Company, be abandoned.

f. That the Farmers and Merchants Telephone Company of Avon and the Springfield Telephone Company of Springfield, be and hereby are given until July 5, 1915, in which to adopt and publish by filing in the office of this Board their new schedule of switching rates between their own lines and the lines of the German Telephone Company, and to enter into and file in the office of this Board, switching contracts governing the switching of messages between their own lines, as well as to and from the lines of the German Telephone Company.

Done in regular session at the city of Pierre, the capital, on this nineteenth day of June, A. D. 1915.

IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF
RATES FILED BY THE NEBRASKA TELEPHONE COMPANY FOR
ITS HILL CITY TELEPHONE EXCHANGE AND TELEPHONE
LINES CONNECTED THEREWITH.

F-190

Decided June 26, 1915.

**Increase in Rates upon Substitution of Metallic System for Grounded
System Authorized.**

FINDINGS AND CONCLUSIONS.

This matter coming on for a hearing at Hill City, South Dakota, June 16, 1915, upon application of the Nebraska Telephone Company, to increase its telephone rental rates for its Hill City Exchange and rural lines connected therewith, the increased rate asked for to become effective upon the completion of the reconstruction of the plant by changing the old grounded line system to metallic lines and re-

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moval of the central office into a building provided for that purpose.

Mr. L. B. Wilson, commercial superintendent, appeared for the Nebraska Telephone Company.

Mr. Charles E. McEachron, president of the council, appeared for the town and the company's subscribers.

The record shows that the changes and improvements proposed have been, or are nearly, completed, that the revenue derived from the increased rates on the present volume of business is hardly sufficient to meet the reasonable operating and maintenance charges; that the company must look for an increase to the volume of business to secure a return upon its investment. The evidence tends to show that the subscribers are agreeable to the imposition of the higher rates for the proposed service, in fact, no opposition whatever was made to either the rates or the service in question. The application calls for the approval of the following schedule of rates, per annum:

	<i>Metallic Circuit</i>		<i>Grounded Circuit</i>	
	<i>Business</i>	<i>Residence</i>	<i>Business</i>	<i>Residence</i>
Individual line	\$30 00	\$18 00	\$18 00	\$12 00
Two-party line	24 00	15 00		
Farm line	18 00		15 00	
Extension set	12 00			
Extension bell	3 00			

From the record, it is our opinion, and we so find, that the rate schedule last quoted should be approved, and the Nebraska Telephone Company be permitted to establish such schedule of rates for its exchange at Hill City, South Dakota, and rural lines connected therewith, said schedule of rates to become effective on the first day of the first month following the complete reconstruction of its plant at Hill City, and an order will be entered accordingly.*

Done in regular session this twenty-sixth day of June, 1915.

*Copy of order omitted.

IN THE MATTER OF THE APPLICATION OF THE WEBSTER TELEPHONE COMPANY FOR AUTHORITY TO INCREASE ITS RATES.

F-164

Decided August 10, 1915.

Increase in Rates Authorized upon Reconstruction and Improvement of Plant.

Applicant sought authority to increase its rates for local service upon the reconstruction and improvement of its plant, and also sought permission to grant a discount of 25 cents per month on individual line business and residence rates, if said rates were paid on or before the fifteenth of the month in which service was given.

Value of Property Determined — Operating Expenses and Revenues Considered.

The Commission considered two valuations of the property, one submitted by the company and the other by the Commission's engineer. Each of these valuations included certain items which the Commission did not consider as used and useful in the public service and which were accordingly excluded. The Commission determined that the fair value of the property for rate-making purposes was \$22,750.

The Commission, after considering the operating expenses, an estimate of which was submitted by the company, and after reducing the amounts allowed for several items and correcting the figures for certain others in which mistakes in computation were apparent, found that the annual operating expenses, exclusive of reserve for depreciation or rate of return, were \$4,328.80. Operating revenues under the old rates were \$6,435. leaving \$2,106.20 out of which to provide reserve for depreciation and interest on the value of the property.

6 Per Cent. Allowed as Reserve for Depreciation — 7 Per Cent. Allowed as Rate of Return — Treatment of Depreciation and Reserve for Depreciation Accounts Outlined.

The Commission gave careful consideration to the fixing of the allowance which should be made for reserve for depreciation, since a too high rate of depreciation, especially in those cases where the depreciation reserve might be invested in additions, betterments and extensions, would conceal a secret reserve or secret profits; and conversely a too low rate of depreciation might result in the partial destruction of the property. The Commission defined depreciation as the lessened money value caused by physical deterioration or lack of adaptation to function, and stated that it was the result of wear and tear due to use in service and the age of the instrumentality, of obsolescence due to a change or development in

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the art requiring new and approved apparatus, of inadequacy or supersession caused by the growth of the business so that the old instrumentality was no longer adequate for the purpose for which it was intended and must be superseded or replaced by a larger unit, and of deferred maintenance due to lack or neglect of repairs necessary to preserve the apparatus in proper condition. The Commission thereupon deducted the scrap value of the different units of the property and divided the wearing value (*i. e.*, the cost of the property in place less the scrap value) by the number of years representing the life of the plant. The mean rate obtained by dividing the total amount of annual reserves for depreciation by the value of the plant was 5+ per cent.

Held: That a rate of 6 per cent. for reserve for depreciation was reasonable;

That a rate of 7 per cent. for dividends was reasonable;

That the company should set up on its books accounts for depreciation and reserve for depreciation, and should credit monthly to reserve for depreciation one-twelfth of the amount allowed in this case for reserve for depreciation and charge a corresponding amount to depreciation account.

Schedule of Rates Prescribed — Discount for Prompt Payment Authorized.

Were the allowances fixed by the Commission for reserve for depreciation and return on investment made, a deficit of \$818.80 would result under the old schedule of rates, so the Commission prescribed a schedule of rates which would be adequate to cover operating expenses, reserve for depreciation and return on investment and leave a surplus of \$99.20, and provided that the company might name in its schedule, rates 25 cents in excess of the prescribed rates, on condition that if telephone rentals were paid on or before the fifteenth day of the month in which service was rendered, a discount of 25 cents should be allowed.

That these rates should apply only within the corporate limits of Webster.

Value of Rural Lines Excluded in Valuing Exchange Property.

The Commission refused to charge any part of the value of the rural lines to the exchange or any part of the value of the exchange to the rural lines, on the ground that the charge of 25 cents per month per telephone for each instrument on rural party lines, as fixed by statute, was intended to cover all the value of the local exchange and telephone service received by the rural lines.

FINDINGS AND CONCLUSIONS.

In 1901 the city of Webster in Day County, this State, granted to Mr. Alexander Ross a fifteen-year franchise to

operate a telephone exchange in that city. This franchise was subsequently assigned to the Webster Telephone Company, which was owned principally by Mr. John Williams and Mr. David Williams of Webster. Although this franchise would not have expired until 1916, a little over two years ago citizens of Webster urged the Webster Telephone Company to install a more up-to-date telephone system in that city. As the result of this request or agitation the city council of Webster on or about the twenty-sixth day of March granted to the Webster Telephone Company a new twenty-year franchise. Section 7 of that franchise reads as follows:

"The charges for monthly rentals and compensation for use of telephones shall be such as may be made by the state railroad commission less a discount of 25 cents per month on each telephone fee paid at the grantee's office by the fifteenth of the month in which the service is rendered."

After the granting of this franchise the Webster Telephone Company during the summer of 1914 commenced, and on or about the month of December of that year completed, a new, modern, improved, up-to-date telephone exchange and system in Webster, including a new brick telephone exchange building and a modern up-to-date 1,500 multiple switchboard, and all of the outside plant except the drop wires from terminal cans to subscribers' stations is cable construction. A part of the cable is underground in a concrete conduit. The plant was new in every particular except that 5,000 feet of wire which had been used in the old plant for a short time and one 40-foot pole were used in the new plant. The telephone instruments are of the latest and most improved construction. The drop wires from the cables or terminal cans to subscribers' stations are copperized. The new telephone plant includes everything that could be desired in the way of telephone construction in a city much larger than Webster, and its patrons should receive through it nothing but the very highest class of telephone service.

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After the plant was fully completed the Webster Telephone Company, agreeable to the provisions of Section 7 of its ordinance, filed a petition with this Board under the provisions of Section 6 of the Telephone Law, which provides:

"No rate or charge for the transmission of any message or for any other service in connection with any telephone line or exchange shall be increased without the written consent of the Board of Railroad Commissioners entered in the journal of its proceedings."

for authority to increase its rates. In that petition the rates then being charged were set forth as follows:

Individual business, grounded circuit.....	\$2 00 per month
Party line business, grounded circuit.....	2 00 per month
Individual residence, grounded circuit.....	1 00 per month
Party line residence, grounded circuit.....	1 00 per month

and the company asked authority to charge, collect and receive the following schedule of rates:

Individual business, metallic circuit.....	\$2 75 per month
Individual residence, metallic circuit.....	1 75 per month

A discount of 25 cents per month off of the above rates if paid by the fifteenth of the month in which the service is given.

Extension telephone, business	\$ 50 per month
Extension telephone, residence	50 per month
Extension bell only	15 per month
Extra user, business	1 50 per month
Extra user, residence	1 00 per month
Local calls from non-subscribers.....	05 per call.

The above rates to apply to that territory which is within three-quarters of a mile of the central office in Webster, South Dakota.

Two hearings have been held, one at the city of Webster and the other at the offices of the Board. At the hearings the applicant was represented by *Messrs. Anderson and Waddel*, its attorneys, and *Mr. David Williams*, owner, and *Mr. E. E. Michaels*, manager. The city of Webster was represented by *Mr. Lewis W. Bicknell*, its attorney, and *Mr. Frank Mohe*, mayor of the city. Following the hearings, briefs were filed by counsel and the cause submitted to the Board for consideration and decision.

VALUATION.

Two valuations have been submitted, one by Mr. Michaels, the manager of the company under whose supervision the new plant was constructed, and one by Messrs. Cassill and Bierman of the force in this office. At the last hearing, also, there was submitted as a part of the record a statement of the plant accounts of the system as shown by its books. The company keeps its books in accordance with the accounting system promulgated by the Interstate Commerce Commission for Class C telephone companies. The latter valuation is not different from the valuation submitted at the first hearing except that there were some changes in and additions to the plant between the dates of the first and second hearings. The figures submitted are as follows

Statement of Plant Accounts.

Account 210, Land and Buildings.....	\$6,104 62
Account 220, Central Office Equipment.....	3,911 32
Account 230, Sub-station Equipment	3,680 39
Account 240, Exchange Lines	11,449 74
Account 260, General Equipment	1,100 52
Account 270, Undistributed Construction Expense.....	416 25
TOTAL	\$26,662 84

Included in the item "Land and Buildings, \$6,104.62," is an item for real estate of \$1,500. It appears from the record that the Webster Telephone Company owns three lots in the city of Webster of which the value is about \$1,500, and that of these three lots the telephone plant occupies a portion equivalent to one-third, or one of the lots, the remaining portion being unoccupied and so located as to be used for any other purposes. It is not at all probable that any of the other real estate will ever be required in connection with the telephone plant. It would therefore appear that the only charge to this account for real estate should be \$500. There is also included in this account a total charge of \$101.81 for the construction of a cement sidewalk, and assuming that the cost of construction is the same for each of the three lots, two-thirds of this item or

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\$67.87 should be deducted and only \$33.94 included in the items properly chargeable to the telephone plant. The testimony of Mr. Michaels, manager of the plant, also discloses that there should be made a further deduction of an item of \$54.00 from this account, making the total deductions \$1,121.87, and the item to be allowed for land and buildings \$4,982.75.

Included in the item "Account 260, General Equipment, \$1,100.52," is an item for tools amounting to \$334.33, which were used during the construction of the plant and are common not only to the city plant but to the rural telephone system owned and operated by the Webster Telephone Company and radiating from its exchange in Webster. We have not before us any data from which we could make an assignment of the cost of these tools as between the plants, nor have we any information on which we could base a charge for the use of the tools to either plant. The company in addition to reconstructing its city plant is also reconstructing its rural lines, and inasmuch as the tools are being used in connection with the rural plant, they do not constitute a proper charge in the capital account of the city plant unless the rural lines pay to the city plant some rental charge for their use. The item is a small one and will make no difference whatever in the last analysis in the rates to be charged, but we deem it proper to deduct the item from the figures shown here, and consequently we have a general equipment figure of \$766.19. Accepting the other figures of the company, there is produced a valuation of \$25,201.64.

The valuation made by Messrs. Cassill and Bierman is composed of the following items designated in the Interstate Commerce Commission's Class C system of accounts for telephone companies:

Account No. 200, Intangibles	\$153 61
Account No. 210, Land and Buildings.....	6,043 92
Account No. 220, Central Office Equipment.....	4,366 07
Account No. 230, Station Equipment	3,181 33
Account No. 240, Exchange Lines	9,749 07
Account No. 260, General Equipment	327 82
TOTAL	\$23,821 82

In connection with this last valuation, all of the checks and vouchers and all invoices for the plant were carefully examined and checked against the inventory. This valuation was made after a careful and exhaustive examination of the entire telephone exchange system. Included within the item of \$23,821.82, however, are two items aggregating \$1,067.87, the value of the two extra lots and sidewalks for the same, and after deducting these items we have as a result of this valuation an item of \$22,754.

The total checks, vouchers and invoices submitted by the company as representing the cost of construction of its plant amounted to \$26,150.99. In this amount is included the item of \$1,067.87 referred to above, and an item of \$1,541.70 for accounts properly chargeable to general office expense, maintenance, maintenance of rural lines, rural line construction and miscellaneous items not properly chargeable to the cost of construction of the city exchange. Deducting these two items, or \$2,609.17, from the total amount of the vouchers and checks, or \$26,150.99, we have an item of \$23,541.72. This telephone plant has been in operation a little over six months. It is a fact that a telephone plant commences to depreciate the moment it is installed and put into operation. For the purposes of this case and fixing the rates to be charged for the future, after a careful and exhaustive examination of the evidence we find and approve the valuation on this plant of \$22,750.

OPERATING EXPENSES.

At the first hearing the manager of the company submitted an estimate of the monthly expense of the new plant. The first item is \$125, operators' wages, which is approved. The next two items include manager's and lineman's proportion of salaries chargeable to the city exchange. The manager receives a salary of \$125 a month and the lineman \$65.00 a month and these salaries, according to the testimony of the manager, are apportioned as between the city exchange and the rural lines on the basis of the number of 'phones in any class of service. In his testimony the mana-

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ger says this is the customary way of apportioning the salaries to the two different classes of service and that he believes this method to be a fair measure of the use of the lineman and of his supervision over the two systems. If, however, the method used by the manager be adopted, it will not produce the results which he has set down in his exhibit. The total number of telephones in the city are as follows:

Business telephones	95
Residence telephones	215
Pay stations	2
<hr/>	
Making a total of.....	312

There are 238 rural telephone instruments in service. This makes a total of 550 telephone instruments. Apportioning the manager's salary on the basis of the number of telephone instruments in service at the city exchange assigns \$70.90 to the exchange and \$54.10 to the rural lines; and on the same basis the lineman's salary is assigned \$36.87 to the city exchange and \$28.13 to the rural lines.

The next item is for fuel, \$20.00 per month or \$240 per annum. We are familiar with the price of fuel for the heating plant installed in this exchange, and it should not exceed \$12.50 per month or \$150 per annum. There is also included in this estimate an item of \$25.00 per month or \$300 per annum for taxes. The taxes on the old plant for the year 1914 were \$144, and in the operating expense account set up on the books of the company for the six months ending May 31, 1915, there is charged \$15.00 monthly for taxes. This charge is merely an estimate and at the time the taxes are paid would in all probability require correction entries on the books of the company; inasmuch as the taxes for the year 1914 were less than \$150, we do not believe they will amount to \$300 for the year 1915 and subsequent years. For the purpose of this case we allowed for annual charge for taxes \$180. In these figures there are also included several items for tornado and other insurance, which would be perfectly proper charges but no such

insurance has ever been taken out. There is also included in this estimated monthly expense an item of \$30.00 per month for removal and changes of telephone instruments. During the first six months of its operation this item actually amounted to \$14.88 or \$2.48 per month. There are also included incidentals \$15.00 per month and under another head, for postage, printing, stationery, etc., \$12.50 per month, and cable man's expense \$10.00 per month. One item for postage, printing, stationery, etc., of about \$15.00 per month would be properly allowed and the other items should be eliminated. An item of \$8.00 per month is also included for bad accounts. If this Commission is to allow the company to name a rate 25 cents in excess of the actual rate to be collected if the rate is paid on or before the fifteenth of the month, the item for lost accounts should be eliminated.

At the last hearing the operating expenses for the first six months as shown on the books of the company appear as follows:

Bad accounts	\$0 41
Taxes accrued	90 00
Account 600, Repairs to wire plant.....	19 80
Account 610, Repairs to equipment.....	95 97
Account 620, Station removals and changes.....	14 88
Account 640, Other maintenance expense.....	46 76
Account 650, Operators' wages	770 59
Account 660, Other traffic expense.....	71 42
Account 670, General office salaries.....	795 00
Account 680, Other general expense.....	428 95

\$2,333 73

There must be some error in Account 650, "Operators' Wages." The testimony shows that the operators' wages amount to \$125 per month, and consequently for six months they would amount to \$750, and not \$770.59. On the basis of the computation for the assignment of the manager and lineman's salary submitted by the manager of the company while on the witness stand, that is, on the basis of the number of telephone instruments in service on the city exchange

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and rural lines, Account No. 670, "General Office Expenses," \$795, appears to be erroneous. The testimony of the manager is that these items were assigned on that basis. If this be true, the proper charge is \$107.77 per month, and for six months \$646.62. We do not say that this is a proper basis and do not wish to be understood as determining that it is the correct method for the apportionment of the salary of the manager and lineman. The record shows, however, that the company claims to have assigned these salaries on the basis of the number of 'phones in service, and if they did so there is an error in this account. With these corrections and setting up the operating expenses on the yearly basis, we find the following amounts:

Taxes accrued	\$180 00
Account 600, Repairs to wire plant.....	39 60
Account 610, Repairs to equipment.....	191 94
Account 620, Station removals and changes.....	29 76
Account 640, Other maintenance expense.....	93 52
Account 650, Operators' wages	1,500 00
Account 660, Other traffic expense.....	142 84
Account 670, General office salaries.....	1,293 24
Account 680, Other general expenses.....	857 90
	<hr/>
	\$4,328 80

OPERATING REVENUE.

The number of telephone instruments in service within the city of Webster May 21, 1915, were as follows:

<i>Class</i>	<i>Old Rate.</i>	<i>Number of 'Phones.</i>	<i>Revenue.</i>
Business telephones	\$2 00	93	\$2,232
Residence telephones	1 00	213	2,556
Extension telephones	50	17	102
Extension bells	15	10	18
Switching rural telephones.....	25	238	714
Switching rural telephones.....	25	47	141
Commission on toll messages.....	.....	.....	672
			<hr/>
TOTAL			\$6,435

If we apply the operating expenses to this revenue, we find a balance of \$2,106.20 out of which to make provision for

reserves for depreciation and interest on the value of the property used and useful for the service of the public. The system of accounting under which this telephone company is operating provides for monthly or annual allowances to be made on the books of the company to cover the depreciation taking place in the plant and equipment. Account No. 185, "Depreciation Reserve," provides for a credit to this account of such amounts as are charged monthly or annually to the expense account No. 630, "Depreciation of Plant and Equipment," to cover the depreciation taking place in the plant and equipment, and Account No. 630, "Depreciation of Plant and Equipment," provides for a charge to this account monthly or annually the estimated amount of depreciation accruing in the plant and equipment. These two accounts balance each other; what is credited to one must be charged to the other. It is quite clearly established by the late authorities that in the making of a schedule or tariff of rates to be charged by a public utility there must be an annual allowance for depreciation.

Beale and Wyman, *Railroad Rate Regulation*, 430 et seq. *Cumberland Telephone and Telegraph Company v. City of Louisville*, 187 Fed. 637, 655; *People ex rel. Jamaica Water Supply Company v. Tax Commissioners*, 196 N. Y. 39, 57; 89 N. E. 581. *Pioneer Telephone and Telegraph Company v. Westenhaver*, 118 Pac. 354. *San Diego Water Company v. City of San Diego*, 118 Cal. 556; 50 Pac. 653. *Cedar Rapids Water Company v. City of Cedar Rapids*, 118 Iowa, 234; 91 N. W. 1081, 1890. *Knoxville v. Knoxville Water Company*, 212 U. S. 1, 29 Sup. Ct. 149. Whitten, *Valuation Public Service Corporations*, Vol. 1, page 402, et seq. Foster, *Engineering Valuation of Public Utilities*, 147 et seq. Floy, *Valuation of Public Utilities*, pages 168 et seq. Hayes, *Public Utilities, Their Cost New and Depreciation*, page 133 et seq.

In *Knoxville v. Knoxville Water Company*, supra, the United States Supreme Court, considering the question of depreciation; said:

"A water plant, with all its additions, begins to depreciate in value from the moment of its use. Before coming to the question of profit at all the

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company is entitled to earn a sufficient sum annually to provide not only for current repairs, but for making good the depreciation and replacing the parts of the property when they come to the end of their life. The company is not bound to see its property gradually waste, without making provision out of earnings for its replacement. It is entitled to see that from earnings the value of the property invested is kept unimpaired, so that, at the end of any given term of years, the original investment remains as it was at the beginning. It is not only the right of the company to make such a provision, but it is its duty to its bond and stockholders, and, in the case of a public service corporation, at least, its plain duty to the public. If a different course were pursued, the only method of providing for replacement of property which has ceased to be useful would be the investment of new capital and the issue of new bonds or stocks. This course would lead to a constantly increasing variance between present value and bond and stock capitalization,—a tendency which would inevitably lead to disaster either to the stockholders or to the public, or both. If, however, a company fails to perform this plain duty and to exact sufficient returns to keep the investment unimpaired, whether this is the result of unwarranted dividends upon over issues of securities, or of omission to exact proper prices for the output, the fault is its own. When, therefore, a public regulation of its prices comes under question, the true value of the property then employed for the purpose of earning a return cannot be enhanced by a consideration of the errors in management which have been committed in the past."

As the amount set aside for annual reserves for depreciation as well as the amount which shall be paid as a return on the value of the property used in performing the service must be deducted from revenues and paid by the public receiving the service, the question of the proper determination of the rate of depreciation should receive the most careful consideration. A too high rate of depreciation, especially in those cases where the depreciation reserve may be invested in additions, betterments and extensions, will conceal secret reserves or secret profits; and, conversely, a too low rate of depreciation may result in a partial destruction of the property. The line of demarcation between depreciation and maintenance is not clear, and the decision as to what constitutes maintenance and what depreciation, within certain prescribed limits, is more or less arbitrary. A high order of maintenance results in a lower depreciation, and, conversely, a low order of mainte-

nance results in a higher depreciation. Depreciation may be defined as the lessened money value caused by physical deterioration or lack of adaptation to function, and is occasioned by wear and tear due to the use in the service and the age of the instrumentality, to obsolescence due to a change or development in the art requiring new and improved apparatus, to inadequacy or supercession caused by the growth of the business so that the old instrumentality is no longer adequate for the purpose for which it was intended and must be superseded or replaced by a larger unit, and deferred maintenance due to lack or neglect of repairs necessary to preserve the apparatus in proper condition. Different rates of depreciation have been prescribed by this Board, by other public service commissions and the courts, and range from 5 to 20 per cent. of the original cost of the property in place. The rate of depreciation must be determined after a careful inspection of the property and must be considered in connection with its use. In the plant in question we have what is commonly known as a brick fire-proof building. For such a building various rates of depreciation have been fixed ranging from 1 to 2 per cent. The federal government makes an allowance of 1 to 1¼ per cent. when occupied by the owner, and 1 to 1½ when occupied by a tenant. In the construction of the plant at Webster there is between 400 and 500 feet of cable placed in concrete conduit in the streets, and as to the remainder of the plant it is all cable construction, the cables being formed of copper wires covered with a lead sheath and the only open-wire work is copperized wire extending from the terminal cans to the subscribers' stations. The central office equipment consists of a 1,500 multiple switchboard wired to serve 400 subscribers, and with the addition of new jacks is capable of serving 1,500 subscribers and 40 rural lines. There is very little probability of depreciation in this plant by reason of obsolescence and inadequacy or supercession, and the depreciation which will take place will be that due to the natural wear and tear, the decrepitude of the plant and deferred maintenance. In fixing the rate of depreciation, it is our opinion that it should only be computed on

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the wearing value; in other words, that the scrap value or salvage value of the different units should be deducted from their cost in place and the amount of the annual reserve for depreciation fixed by dividing the wearing value by the number of years representing the life of the plant. In this case this has been done and the mean rate of depreciation obtained by dividing the total amount for annual reserves for depreciation by the value of the plant, which gives the rate of 5 plus, so that a rate of 6 per cent. for depreciation, considering the character of this plant and the scrap value of its component parts, will in our opinion be sufficient. We think that the dividends should equal an amount not less than 7 per cent. of the value of the plant. Applying these figures to the value we produce the following result:

Operating revenue under old rates.....		\$6,435 00
Total operating expenses	\$4,328 80	
Depreciation, 6 per cent. on \$22,500*.....	1,350 00	
Dividends, 7 per cent. on \$22,500*.....	1,575 00	
Deficit under old rates.....		818 80
	<hr/>	
	\$7,253 80	\$7,253 80

It clearly appears from the foregoing that if the Webster Telephone Company is to be allowed a fair rate of depreciation and a reasonable return on its investment, some part of its petition for an increase in rates must be allowed, and its revenue accounts will therefore be reconstructed on the following basis:

93 Business telephones at \$2.25 per month.....	\$2,511
213 Residence telephones at \$1.25 per month.....	3,195
17 Extension telephones at 50 cents per month.....	102
10 Extension bells at 15 cents per month.....	18
Switching 238 rural telephones at 25 cents per month..	714
Switching 47 rural telephones at 25 cents per month...	141
Commissions on toll messages at an average of \$56.00 per month	672
	<hr/>
TOTAL	\$7,353

* A discrepancy of \$250 is apparent.

As previously shown, the operating expense, including the above allowance for depreciation and dividends, amounts to \$7,253.80, leaving a net surplus of \$99.20.

From the testimony in this record it quite satisfactorily appears that with proper diligence the Webster Telephone Company will be able to increase its subscriptions so that in a year or two the full capacity of the switchboard as now wired, or approximately 400 subscribers will be renting telephone instruments from it, and to this extent its revenues will be increased. In fact, this is the anticipation of the company.

There has been some discussion in this case on the part of the company that some part of the valuation of its rural lines should be charged to the city exchange, and on the other hand by the city that some part of the valuation of the exchange should be charged to the rural lines. Under the laws of this State, rural telephone lines receive service at a city exchange upon the payment of 25 cents per month for each telephone instrument on the rural party line connected, and in establishing the revenue in this case it will be noted that it is on this basis the revenues and operating expenses and values have been computed. In other words, the operating expenses of a rural line connected with this local exchange and operated by the same company must be taken off of the back of the switchboard and the remuneration paid from the rural lines to the city exchange of 25 cents per telephone instrument included within the revenue item of \$714 pays for all the value of the local exchange and telephone service received by the rural lines, and that no valuation either of the rural lines to the city exchange or of the city exchange to the rural lines should be made. The statute contemplates that this 25 cents switching fee for each telephone instrument pays for all the service received by the rural subscribers from the city exchange and hence it is properly included in the exchange revenue.

After a careful examination of all the testimony in this case, we are of the opinion and find that the Webster Tele-

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phone Company rates for the future and until the further order of this Board in the premises should be as follows:

Individual business, metallic circuit.....	2 25 per month
Individual residence, metallic circuit.....	1 25 per month
Desk sets	25 per month
Extension telephone, business.....	50 per month
Extension telephone, residence.....	50 per month
Extension bell only.....	15 per month
Extra user, business.....	1 50 per month
Extra user, residence.....	1 00 per month
Local calls from non-subscribers.....	05 per message

and that these rates should be made effective commencing the fiscal year July 1, 1915, all rates to be paid on or before the fifteenth day of the current month, and that permission be granted to the telephone company to name a rate in its published schedules 25 cents per month in excess of the above prescribed rates on condition only that if the telephone rental is paid on or before the fifteenth day of the current month in which the service is rendered, discount of 25 cents per month shall be allowed. That these rates shall apply only within the corporate limits of the city of Webster.

As conclusions of law from the foregoing facts the Board now hereby finds and decides that an order be made in this proceeding approving the schedule of rates last above set forth effective as of July 1, 1915.

ORDER.

In this case, the Board having completed its investigation and on this date made and filed its findings of fact and conclusions of law, and being fully advised in the premises, and sufficient cause for this order appearing,

It is, therefore, ordered, considered and adjudged,

That the rates for telephone rentals and telephone service in connection therewith for the Webster Telephone Com-

pany applying within the corporate limits of the city of Webster and effective as of the first day of July, 1915, be and hereby are fixed at the amounts as follows, to wit:

Individual business, metallic circuit.....	\$2 25 per month
Individual residence, metallic circuit.....	1 25 per month
Desk sets	25 per month
Extension telephone, business.....	50 per month
Extension telephone, residence.....	50 per month
Extension bell only.....	15 per month
Extra user, business.....	1 50 per month
Extra user, residence.....	1 00 per month
Local calls from non-subscribers.....	05 per message

and that these rates should be made effective commencing the fiscal year July 1, 1915, all rates to be paid on or before the fifteenth day of the current month, and that permission be granted to the telephone company to name a rate in its published schedules 25 cents per month in excess of the above prescribed rates on condition only that if the telephone rental is paid on or before the fifteenth day of the current month in which the service is rendered, a discount of 25 cents per month shall be allowed. That these rates shall apply only within the corporate limits of the city of Webster.

That the said Webster Telephone Company be, and hereby is, commanded and required to actually set up on its books accounts for depreciation and reserves for depreciation, and to credit monthly to reserves for depreciation one-twelfth of the amount allowed in this cause for reserves for depreciation and charge a corresponding amount to the depreciation account.

Done in regular session at the city of Pierre, the capital, on this tenth day of August, 1915.

IN THE MATTER OF TOLL RATES TO BE CHARGED TO NON-SUBSCRIBERS USING RURAL TELEPHONES OF SUBSCRIBERS FOR SENDING TOLL MESSAGES.

Complaint No. 2119.

Dated August 18, 1915.

Non-subscriber May be Charged Fee on Local Calls Transmitted Either from Pay Station or Subscriber's Telephone — Non-subscriber to be Charged Only Toll Rate and No Additional Fee on Toll Messages Transmitted Either from Pay Station or Subscriber's Telephone — Right of Company to Refuse Non-subscriber Use of Subscriber's Telephone Discussed.

The Tri-County Farmers' Telephone Company inquired what rate it was to charge a non-subscriber who used the telephone of one of its rural subscribers for the purpose of making a toll call, and also inquired whether or not it could refuse to accept toll calls made by a non-subscriber in this way.

The Tri-County company charged a non-subscriber rate of 10 cents when a non-subscriber called from a telephone on a rural line and sought connection with a subscriber of the defendant. The question was whether in making a toll call from a rural telephone the non-subscriber should be charged the toll rate plus the non-subscriber charge, or merely the toll rate.

Held: That any charge made to a non-subscriber on an outgoing toll message intended to cover the service received in reaching the toll line, should be considered as a terminal fee;

That under the law of South Dakota the terminal fee is fixed at 5 cents per message, and this fee is always included in the fixed toll rate;

That consequently a non-subscriber transmitting a long distance message from a rural subscriber's telephone should be charged only the regular toll rate;

That the Tri-County Telephone Company could not refuse to allow a non-subscriber to use the telephone of a rural subscriber for a toll call provided the subscriber consents to such use.

OPINION OF COUNSEL FOR BOARD.*

This is in answer to your request for my opinion in reference to the following inquiry submitted by Mr. H. P. Hart-

*In its Pamphlet No. 1, issued August 1, 1912, the Board states that the opinions of its counsel will govern in the various subjects to which they relate unless reconsidered by the Board or reversed by court procedure.

well, secretary of the Tri-County Farmers Telephone Company of Irene, South Dakota :

"A non-subscriber comes to our 'phone on rural line, and asks for a given subscriber, we charge this non-'phone holder 10 cents for this service, which we believe is proper. Now this same non-subscriber comes to a rural 'phone, anywhere up to 18 miles in country and asks for a party at Yankton over toll, our toll rate is 20 cents, are we to charge this non-'phone holder but the toll? Or are we entitled to charge him, what we herebefore charged him, viz. 10 cents for our line? We have this 20 cents toll money now out in the country anywhere up to 18 miles and it is up to us to get it, and it is quite important to know what profit we have in doing this business. We could not refuse to accept this business could we?"

The inquiry is necessarily confined to the application of rates for non-subscribers. For, I take it, there can be no question as to the propriety of making some charge to non-subscribers for service and facilities which subscribers receive only in consideration of payment of proper rates; and an inquiry of this kind is not the proper method by which to raise the question as to the amount or reasonableness of any rate.

The difficulty presented is that of applying, in the case of non-subscribers, a given rate, whether it be 5 cents, 10 cents, 20 cents or any other amount, in such a manner as not to effect a discrimination in favor of, or against, subscribers. To permit those who are not subscribers to use without any charge, telephone facilities for which subscribers are required to pay regular rates, necessarily results in an unjust discrimination in favor of the non-subscriber; and such a practice would further constitute a clear violation of the Anti-Pass Law of this State. Moreover, to charge those who are not subscribers any amount for a given service in excess of the amount subscribers are required to pay for the same service, effects an unlawful discrimination in favor of the subscriber. While it may not be possible in all cases to harmonize a charge for a single call originated by a non-subscriber with a flat monthly rental paid by a subscriber, still it is quite possible to apply

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uniformly the rates for those who are, and those who are not, subscribers.

It seems to me that two possible solutions to the inquiry of the Tri-county Farmers Telephone Company are suggested. Bearing in mind the rule of this Board, whereby all of the urban and rural telephone lines connected directly or on a switching basis with a given exchange, are held to constitute a local unit for telephone service and purposes, let us consider whether one or the other of the following methods might work out in a practicable and non-discriminatory manner: (1) By requiring non-subscribers to pay a fixed charge per originating call under all circumstances whenever or wherever they ask for telephone service; (2) by requiring non-subscribers to pay a fixed charge per originating call for local messages only, as distinguished from toll or long-distance messages; the term "local messages" to include all messages passing solely over wires and facilities constituting the local unit.

Insistence upon Method 1 would oblige the non-subscriber to pay the fixed non-subscriber charge in connection with every originating local and long-distance call when transmitted through a subscriber's rural or urban 'phone, or through one of the local company's public pay stations. I believe, however, that this plan would be open to serious criticism in at least one respect. Supposing a non-subscriber desired to transmit a toll message from a public pay station; he would be charged in such event, the regular toll rate, plus the fixed non-subscriber's rate; whereas any subscriber to a 'phone in the local unit could, from the same or any other public pay station, obtain the identical service by paying only the regular toll-message charge. I doubt that this method could in the instance supposed, be sustained, as not being a discrimination against the non-subscriber. It would seem that the same criticism could not so aptly be made in case the non-subscriber should ask to transmit a long-distance message from the 'phone of a subscriber, because in that event, he would use facilities and

receive an extended service for which the subscriber pays as a part of his monthly or yearly rental.

To Method 2, above, I can see but one possible objection, and that is that it may not be wholly consistent, for it would permit a non-subscriber the free use of a subscriber's facilities in connection with a long-distance message, but require him to pay for the use of same for local conversation. Inasmuch as the justification for any charge per call against the non-subscriber, is the consideration that he is not entitled to the free enjoyment of a service or employment of facilities or equipment which a subscriber in the rate he pays, must construct, maintain and pay interest upon, the question naturally arises, "Why should a non-subscriber be given this extended service and the use of such facilities free in any case?"

However, the legislature seems to have been of the opinion that this service is not "free" when rendered in connection with the transmission of a long-distance message. The answer to this question appears to be found in Section 6 of Chapter 289 of the Laws of 1909, as amended by Section 4 of Chapter 218 of the Laws of 1911, wherein it is provided that

"All terminal fees for incoming or outgoing toll messages shall be uniform and the maximum charge on each incoming or outgoing toll message shall not exceed 5 cents for any message originating or terminating in South Dakota, unless otherwise ordered by the Board of Railroad Commissioners."

I take it that any charge made to a non-subscriber on an outgoing toll message, intended to cover the service received in reaching the toll line, would be considered a "terminal fee" under this section; and therefore, that it cannot exceed 5 cents, which is always included in the fixed toll-message rate. So that this law, unless the Board shall otherwise order, (and they have not otherwise ordered) precludes any separate charge for use of a subscriber's 'phone in connection with a toll call. This condition of the law absolutely precludes the first plan considered above.

and renders the adoption of the second plan imperative. This means, in other words, that a non-subscriber should be required to pay a proper and reasonable rate, charged uniformly to all non-subscribers, for every local call; and that when he transmits a long-distance message he should be charged only the regular toll rate.

These views enable me to answer the questions of the Tri-County Telephone Company as follows: I believe that it is proper to charge a non-subscriber a reasonable rate for the service he requires when he calls, through either a rural 'phone, or any 'phone connected with a local exchange, a subscriber to any 'phone in that local telephone area or unit. The amount of that rate may or may not be 10 cents; I am unable to say how much it should be, and I believe that the matter of the amount of such charge is a proper subject for investigation by the Board when application shall have been made to it for that purpose. I believe, further, that when a non-subscriber, using a public pay station or a rural, or a city subscriber's 'phone, transmits a toll message to Yankton, or elsewhere, he should be charged the toll rate, and nothing in addition to the toll-message rate.

So much for the application of non-subscriber's rates. The question remains: "We could not refuse to accept this business, could we?" The views I have stated above lead to the conclusion that the Tri-County Telephone Company cannot refuse to accept the business offered by a non-subscriber calling from either a farm or city subscriber's 'phone in any case when the subscriber consents to the use of his 'phone by the non-subscriber, and when the company has in effect a lawfully established local rate to cover the service required in a local call; that the company cannot refuse a non-subscriber the use of a subscriber's 'phone when the subscriber consents to the use, for a long-distance call, providing the non-subscriber is to be charged the regular toll rate and no more for the toll message; but that the company must refuse to permit a non-subscriber to use a subscribers' 'phone for any kind of a call, if the subscriber

does not consent to such use, or if it is a local call and the company has no legally established non-subscriber's rate for such local message.

Ordinarily I believe that the practice to require non-subscribers to use public pay stations will work out more satisfactorily than any plan for a non-subscriber's rate for use of subscriber's 'phones. However, telephones are, under our law, common carriers and their service should be made, so far as practicable, available for the increasing demands for it. Especially is this true in the case of farm lines, where public pay stations are not always accessible.

Dated August 18, 1915.

IN THE MATTER OF THE INVESTIGATION OF THE CANISTOTA
TELEPHONE COMPANY AND ITS METHOD OF CONDUCTING
ITS BUSINESS, AND ITS RATES CHARGED FOR TELEPHONE
SERVICE AND FOR THE SWITCHING OF TELEPHONE MES-
SAGES FROM RURAL PARTY LINES.

F — 189.

Decided August 23, 1915.

**Contracts for Switching Service Ordered Made and Filed — Basis of
Said Contracts Fixed.**

The Commission investigated the refusal of the Canistota Telephone Company to enter into a written contract covering the switching at the Canistota Exchange of a rural line owned by the Humboldt-Hartman-Wellington Telephone Company, except on the basis of 50 cents per telephone per month.

Investigation showed that the defendant had failed and refused to enter into contracts with each and every telephone company with which its exchange and rural lines had connection, and had not caused certified copies of any connecting contracts to be filed with the Board. The defendant signified its willingness to enter switching contracts with all connecting companies, except the Humboldt company, and to cause certified copies of said contracts to be filed.

The Humboldt company was operating a line in competition with the Canistota company, and for this reason the latter claimed that it should be given, for switching this line, a larger compensation than the 25 cents per month per telephone maximum fixed by statute.

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Held: That the Canistota Telephone Company should be required to enter into a written contract with each and every telephone company with which it has direct physical connection, and should cause certified copies of said contracts to be filed with the Board;

That the Canistota Telephone Company should enter into a written contract with the Humboldt company for switching the Humboldt line which has connection with the exchange of the defendant at Canistota, on the basis of not to exceed 25 cents per month per telephone, this basis to apply up to the first switch;

That the Canistota Telephone Company should enter into a written contract on a basis of not to exceed 18¾ cents per month per telephone with the Hurley Telephone Company covering a farm line connected with the exchange of the latter company at Dolton, said agreement and rate to be in lieu of the free service at present rendered.

FINDINGS AND CONCLUSIONS.

Informal complaint having been made by the Humboldt-Hartman-Wellington Telephone Company, that the Canistota Telephone Company of Canistota had refused to enter into a written contract covering the switching at the Canistota exchange of a rural telephone line owned and operated by the said Humboldt-Hartman-Wellington Telephone Company, except upon basis of 50 cents per telephone per month, and considerable correspondence having failed to bring about a satisfactory adjustment, an order was issued making the Canistota Telephone Company and J. W. Smith, its owner and manager, defendants in this proceeding, and on the twenty-third day of June, 1915, the matter was set down for hearing at Canistota for the second day of July, at the hour of two o'clock in the afternoon, at which time and place the complaining telephone company appeared by *Mr. C. P. Hoefert*, its president, *Mr. Henry Mundt*, its secretary, and *Mr. H. C. VanVleet*, its manager. The defendants appeared by *Mr. J. W. Smith*, owner and manager. The Commission was represented by its counsel, *Mr. Oliver E. Sweet*. Witnesses for both complainants and defendants being sworn and testimony taken, the Board having carefully considered all of the evidence in the case and being fully advised in the premises, now orders filed the following findings of fact:

That the Canistota Telephone Company is owned by J. W. Smith, who operates a telephone exchange in Canistota, South Dakota, and in connection therewith eight rural telephone lines; that one of these farm lines has direct connection with the Hurley Telephone Company's exchange at Dolton on a free interchange basis; that the Canistota exchange has long distance connections with the Dakota Central Telephone Company; that no contracts have been entered into covering either of these connections; that said exchange is connected with the exchanges at Monroe, Parker and Hurley, belonging to the Steninger Telephone Company, by means of a local toll line owned by the Steninger Telephone Company and a 10 cent exchange charge is imposed on interchange of rural line business; that interchange of the exchange business is conducted over the long distance toll lines. That the Canistota Telephone Company has about one hundred seven town subscribers and seventy-five rural subscribers; that the rates are: business \$1.50 per month, residence \$1.00 per month, rural \$1.25 per month. This company switches for nine farm lines as follows: Companies No. 1 and No. 2, 5 lines, between Canistota and Salem, at \$2.25 per year per telephone; Montrose Telephone Company, one line between Canistota and Montrose at \$1.50 per year per telephone; one line called the Hoyton line is switched at \$3.00 per year per telephone; one line called the Terrell line is switched at \$3.00 per year per telephone, and the Humboldt-Hartman-Wellington Telephone Company, one line running from Canistota to a farm switch with twelve subscribers has been switched at Canistota for \$3.00 per year per telephone; that the refusal of the Canistota Telephone Company to enter into contract to continue switching for the subscribers of this farm line at 25 cents per month or \$3.00 per year per telephone, was the immediate cause of the filing of complaint herein. It is also a fact that on interchange of rural line business to or from rural subscribers beyond the above mentioned farm switch, a message rate of 10 cents applied;

That at the time of the hearing, the defendant had failed, neglected and refused to enter into written contracts with

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each and every telephone company with which its exchange and rural lines had connection, and had failed, neglected and refused to cause to be filed with this Board certified copies thereof as required by law, notwithstanding that this defendant had been frequently advised and admonished by this Board of the legal necessity of doing so. That this company has not caused certified copies of any connecting contracts to be filed, but at the hearing signified its willingness to at once enter into switching contracts with all connecting companies and cause certified copies thereof to be filed with this Board, except with the Humboldt-Hartman-Wellington Telephone Company. Its position in regard to switching relations with this company for the line in question is that this company is operating this line in direct competition with the Canistota exchange, that the line over which the dispute arose parallels one of the lines owned by the Canistota Telephone Company and because the Humboldt-Hartman-Wellington Telephone Company charges its rural subscribers \$12.00 per year, and gives those subscribers on its line connected at Canistota service at both Canistota and Humboldt, it is in competition with the Canistota company and the latter should be given a larger compensation than the maximum fixed by the statute, namely 25 cents per month per telephone. That the Canistota company constructed its line paralleling the Humboldt-Hartman-Wellington Telephone Company's line about a year ago, several years after the latter mentioned company's line was in operation; that the Humboldt-Hartman-Wellington Telephone Company is willing to enter into contract on the basis of 25 cents per month per telephone and that it had prior to the hearing offered and attempted to enter into such a contract.

It appears to the satisfaction of the Board, and we find, that the Canistota Telephone Company and J. W. Smith, its owner and manager, are engaged in the business of transmitting messages by telephone and are operating a telephone exchange and lines, and are common carriers as defined in Section 1, Chapter 289, Session Laws of 1909, as amended by Chapter 218 of the Session Laws of 1911. That

as such common carrier, the said Canistota Telephone Company and J. W. Smith, its manager and owner, are amenable to all the laws of this State governing the telephone business and those engaged therein. Section 1 of the Act is as follows:

"Section 1. *Terms Defined.* The term telephone company as used in this act shall mean and embrace all corporations (except municipal), associations and individuals, their trustees, lessees, and receivers, that now or hereafter may own, operate, manage, or control any telephone line, system or exchange, or any part of any telephone line, system or exchange in this State; and all such telephone companies are hereby declared to be common carriers, and all laws, so far as applicable, now in force or hereafter enacted regulating common carriers, shall apply with equal force and effect to all such telephone companies."

That the Canistota Telephone Company and J. W. Smith have failed, neglected and refused to enter into contracts with connecting companies and to cause certified copies thereof to be filed with this Board as provided by Section 4 of the Act referred to, which section provides among other things that:

"Every telephone company must, before commencing to charge, collect or receive any rate or charge for the transmission of any messages or for any service in connection therewith, or for the rent of any line or instrument, or facility of any kind, file with the Board of Railroad Commissioners, a full, true and correct schedule or tariff showing every such rate or charge and a correct, examined copy verified by such telephone company, its officers or authorized agents, of every franchise and license granted to such company by any municipality in this State or assigned to it by any grantee thereof and still remaining in force, as well as a true, full and correct copy of any contract or agreement entered into by said company with any municipality, telephone company or companies, within twenty days after the granting or assignment of such franchise or license, or making of such contract or agreement. Such copies shall be duly certified as full, true and correct by the president, secretary or managing agent of such company."

That the Humboldt-Hartman-Wellington Telephone Company is entitled to the connection at the exchange at Canistota on the switching basis of not to exceed 25 cents per month per telephone, as provided in Section 8 of the Act. which reads as follows:

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"Section 8. *Interchange and Switching.* Every telephone company shall connect its lines with the lines of any other telephone company doing business in the same vicinity, that makes application therefor, and shall afford all reasonable and proper facilities for the interchange and switching of messages between lines, for a reasonable compensation and without discrimination, and under such rules and regulations as the Board of Railroad Commissioners may prescribe. * * * *Provided,* That the maximum charges for switching shall not exceed 25 cents per month for each instrument on any rural party line so connected."

That the Canistota Telephone Company and J. W. Smith its manager and owner, have been and are operating the telephone business and telephone exchange at Canistota in violation of law;

That there may be some question of the propriety of permitting the Humboldt-Hartman-Wellington Telephone Company to give some of its subscribers two-exchange service at the same rate exacted from the majority of its subscribers for one exchange service. This matter not being properly in issue in this case, it will not be further considered here.

As conclusions of law from the foregoing facts, the Board now finds and decides:

That an order be entered requiring and commanding the Canistota Telephone Company and J. W. Smith, its owner and manager, to enter into written contracts with each and every telephone company with which it has direct physical connection, and to cause to be filed with this Board certified copies thereof.

That the order require and command the said Canistota Telephone Company and J. W. Smith to enter into written contract with the Humboldt-Hartman-Wellington Telephone Company for the switching of the farm line owned by the said Humboldt-Hartman-Wellington Telephone Company and having connection at the exchange of the defendants at Canistota, on the basis of not to exceed 25 cents per month per telephone, or \$3.00 per year, this basis to apply up to the first switch;

That the defendants herein be required and commanded to enter into a written contract on a basis of not to exceed

18¾ cents per month per telephone with the Hurley Telephone Company, covering the farm line connected with the exchange of the latter company at Dolton.

Thirty days is considered a reasonable time within which to comply with the requirements herein.

For the information of the defendants, Section 13 of the Act is here quoted:

"Section 13. *Violation — Penalty.* Every owner or operator of a telephone line who shall violate, neglect, fail or refuse to comply with any lawful order, rule or regulation of the Board of Railroad Commissioners of this State, shall upon conviction thereof, be punished by a fine of not less than \$200 nor more than \$1,000, in the discretion of the court."

ORDER.

In this cause, the Board having made and filed its findings of fact and conclusions,

It is ordered, considered and adjudged, That the Canistota Telephone Company and J. W. Smith, its owner and manager, the defendants in the above named cause, be, and hereby are, required and commanded to enter into written contracts with each and every telephone company with which it has direct connection and to cause to be filed with this Board certified copies thereof, and that the above named defendants be, and hereby are, ordered, required and commanded to enter into written contracts with the Humboldt-Hartman-Wellington Telephone Company, for the switching of a farm line owned by said Humboldt-Hartman-Wellington Telephone Company, and having connection with the defendants at Canistota, on the basis of not to exceed 25 cents per month, or \$3.00 per year per telephone, it being understood that this basis is to apply to subscribers located between Canistota and the first switch only.

That the defendants herein be and hereby are required and commanded to enter into a written contract on a basis of not to exceed 18¾ cents per month per telephone with the Hurley Telephone Company covering the farm line connection at the exchange of the latter company at Dolton, South Dakota.

That the defendants herein be and hereby are required and commanded to comply with the requirements herein within thirty days from the date of this order.

Done at Pierre, the capital, on this twenty-third day of August, A. D. 1915.

IN THE MATTER OF THE INVESTIGATION INTO THE PRACTICES
AND RATES OF THE CHEYENNE VALLEY ELECTRIC TELE-
PHONE COMPANY AND THE RED OWL TELEPHONE AND
ELECTRIC COMPANY OF WALL, SOUTH DAKOTA.

F-146

Decided August 26, 1915.

Investigation of Practices Made.

The Commission made an investigation into the practices of the Cheyenne Valley Electric Telephone Company and the Red Owl Telephone and Electric Company.

Contracts for Switching Service Ordered Made and Filed.

The companies had not complied with the law requiring that every company should make contracts with connecting companies covering the switching of said companies and should file certified copies of said contracts with the Board.

Held: That both companies should enter into contracts covering their switching relations and file said contracts with the Board;

That the switching connection at Pedro should be on the basis of a rental rate of 25 cents per month for each instrument on the line of the Red Owl company.

Message Rates to Subscribers Ordered Discontinued.

In addition to the rental rate, a toll rate was charged subscribers for local and long distance calls, and in addition to this rate there was a different rate for non-subscribers. On telegrams received at Wall and delivered over these rural lines a similar fee was charged.

Held: That upon the establishment of a switching service between said companies at Pedro, the practice of charging message rates to subscribers should be discontinued.

Discrimination Eliminated.

A physician at Wall had two telephones in his office at a rental equivalent to the rental of one residence telephone, and a drayman received telephone connection at 5 cents per completed call.

Held: That these rates should be discontinued and the regular scheduled rates charged.

Discount for Prompt or Advance Payment Authorized.

Much difficulty was experienced in collecting rentals from subscribers on rural lines.

Held: That in order to facilitate the collection of telephone rentals, the Board would approve the naming of a rate 25 cents in excess of the present rates on condition that if rentals were paid on or before the tenth of the current month by city subscribers, and quarterly in advance by rural line subscribers, a discount of 25 cents per month would be allowed.

Improvement of Service Ordered.

The line between Wall and Marcus was overloaded and satisfactory service was impossible.

Held: That the Cheyenne Valley company should string a No. 9 wire from its exchange at Wall to Creighton, and there connect it with the No. 9 wire extending from Creighton to Pedro so as to relieve the overloaded condition of the wire from Wall to Pedro;

That this additional wire might obviate the need for a switch at Pedro. in which event the Red Owl company could make permanent connections at Cheyenne River for switching its messages over the Cheyenne line at the rate fixed by the switching statute, and under such an arrangement telegrams should be delivered to all subscribers of both lines without the imposition of any additional charge.

DECISION.

This case was heard on June 14, 1914. The Cheyenne Valley Electric Telephone Company appeared by its manager, *Mr. T. E. Knapp*, and the Red Owl Telephone and Electric Company by *Mr. C. E. Dowling*, its manager.

From the evidence it appears that the Cheyenne Valley Electric Telephone Company, a corporation organized under the laws of this State, owns and operates an exchange at Wall and one rural party telephone line extending in a northwesterly direction from Wall through the inland towns of Creighton and Pedro on the Cheyenne River and across the river in a north and westerly direction into

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Meade County about seven miles; that on the line between Wall and the river it has twenty-two subscribers and fifty-seven miles of line, and across the river seven subscribers; at Wall it has thirteen business and four residence subscribers; its rates are as follows:

Business telephone, per month.....	\$2 25
Residence telephone, per month.....	1 75
Rural party telephone, per month.....	1 50

that at Pedro it has connection with the Red Owl company which owns and operates a line crossing the Cheyenne River and extending in a northwesterly direction through Tivis and Marcus. Both companies maintain a telephone instrument at Pedro on the Cheyenne River in the residence of a Mr. Elmer Hawks, who is a stockholder and officer in both companies, and who makes no charge for his services in switching other than the use of the telephone instrument installed in his place of business. At Wall the Cheyenne company switches for the Lake Flat Mutual company on the basis of 25 cents per month for each telephone instrument. The Red Owl company's rates are \$1.50 per month or \$18.00 per annum.

Although the statute requires that contracts shall be entered into between telephone companies for telephone service and certified copies thereof filed in the office of this Board, these companies have not complied with the law in this respect. In addition to the rental rate, a toll rate is charged subscribers for local and long distance calls, and in addition to this rate there is a different rate for non-subscribers. On a message from a subscriber to the Wall exchange addressed to Marcus the rate is 25 cents, whereas the non-subscriber rate on a similar message is 60 cents. The non-subscriber rate between Wall and Pedro is 40 cents and from Pedro to Marcus 35 cents. The through rate from Wall to Marcus is 60 cents. On telegrams received at Wall and delivered on these rural lines to subscribers and others, similar charges are made. A physician at Wall has two telephones in his office at a rental

equivalent to the rental for one residence telephone, and a drayman pays for his telephone service at the rate of 5 cents per completed call. The Cheyenne company has a contract at Wall for toll connections with the Nebraska Telephone Company under which it receives 15 per cent. on originating and 10 per cent. on terminating messages. Under the statute it would be entitled to receive a fee of 5 cents on each originating and terminating message. For the period ending April 31, 1915, its revenue under its commission contract amounted to \$40.51, whereas under the statute it would have amounted to \$48.25.

Much difficulty is experienced by these companies in collecting rentals from subscribers on the rural lines. The line between Wall and Marcus is overloaded and does not furnish satisfactory service, and this is likewise true of the line between Wall and Pedro. Between Wall and Creighton the Cheyenne company's line is constructed with No. 12 wire, and beyond Creighton to Pedro, of No. 9 wire. If the No. 9 wire was continued from Creighton to Wall it would release and relieve the overloading of the line now in existence and solve much of the difficulty in the transmission of messages from the Red Owl company to Wall and beyond, and might obviate the necessity for the switch at Cheyenne River. In that event the Red Owl company could and undoubtedly would make permanent connections at the Cheyenne River for switching its messages over the Cheyenne line at the rate fixed by the switching statute, viz., 25 cents per month for each telephone instrument situated on its lines. Under such an arrangement telegrams should be delivered to all subscribers of both lines without any charge other than the charge for the transmission of the telegrams by the railway company, and the message rate now in force would apply only to messages transmitted by non-subscribers.

In order to facilitate the collection of telephone rentals, this Commission will approve the naming of a rate by these companies which shall be 25 cents in excess of the rate now charged, on the condition that if the rentals are paid on or

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before the tenth day of the current month as to the lines in Wall, and quarterly in advance as to the rural party lines, a discount of 25 cents shall be made for each month's rental.

In this case the Cheyenne Valley Electric Telephone Company is required to cease and desist from its practice of renting two telephone instruments to the physician at Wall for the price of one residence telephone instrument, and to discontinue the application of the 5 cent message rate for the drayman and charge him the regular monthly telephone rate; to string a No. 9 wire from its exchange at Wall to Creighton and there connect it with the No. 9 wire extending from Creighton to Pedro so as to relieve the overloaded condition of the wire from Wall to Pedro. Both companies are required to arrange for switching connections at the Cheyenne River at Pedro on the basis of a rental rate of 25 cents per month for each instrument on the line of the Red Owl Telephone and Electric Company, this amount to be paid by the latter company to the Cheyenne Valley Electric Telephone Company monthly or quarterly as they may agree. Both companies are required to cease and desist from the practice of charging message rates to their subscribers after this arrangement is made, and the message rate now in effect shall apply only to messages from non-subscribers. Both companies will enter into contracts covering their switching relations and file copies thereof with this board. Thirty days is considered a reasonable time within which to comply with these requirements. This Board will withhold making any order in this case for the present and until it has further advice from the companies interested.

Done in regular session at the city of Pierre, the capital, on this twenty-sixth day of August, 1915.

WASHINGTON.

The Public Service Commission.

IN THE MATTER OF THE ADOPTION, PROMULGATION AND ISSUANCE OF RULES AND REGULATIONS GOVERNING METHOD OF COLLECTION OF ACCOUNTS FOR LOCAL EXCHANGE AND LONG DISTANCE SERVICE BY TELEPHONE COMPANIES SUBJECT TO THE PROVISIONS OF CHAPTER 117 OF THE SESSION LAWS OF 1911 OF THE STATE OF WASHINGTON, AND RELATING TO SECURITY FOR INSTALLATION OF INSTRUMENTS OR OTHER PURPOSES.

Order No. 1791.

Decided August 21, 1915.

Requirement of Deposit or Installation Fee as Condition Precendent to Service Held Unreasonable — Repayment of All Moneys So Held Ordered — Requirement of Payment in Advance Approved.

Held: That if a deposit is to be required at all, it must be required of all patrons without discrimination, for the practice of requiring a deposit from certain subscribers, although not requiring it from others, is discriminatory;

That no cash deposit or other security for the installation of instruments, for the payment of accounts for local exchange service or long distance service between points in the State of Washington or for any other purpose should be required of any subscriber by a telephone company, provided that a deposit may be required for any local or long distance call originating at a pay station;

That any telephone company may exact from any subscriber two months' rental in advance at the time of ordering service, such charge in no case to exceed the sum of \$5.00; if the charge for the service ordered shall exceed the sum of \$5.00 per month, the patron should pay from month to month in advance; if the service charge shall not exceed the sum of \$5.00, the portion not absorbed in the first month's rental should be applied upon the succeeding month's rental and the patron should thereafter pay from month to month in advance. No payment should be exacted from a patron on account of change of residence or telephone:

That the company may discontinue service to any subscriber on and after the expiration of ten days from the date on which any account for

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local exchange service or long distance service becomes due and payable, in advance or otherwise, when such account remains unpaid.

Ordered, That all companies discontinue the practice of charging deposits or installation fees and return to all persons heretofore making such deposits all moneys now in its possession or heretofore or hereafter claimed by it as a deposit.

OPINION AND ORDER.

On the twenty-fourth day of September, 1914, the Public Service Commission of Washington, promulgated Rules No. 1 and No. 2 with reference to the requirement of a deposit or other security for the installation of instruments to be used by subscribers in telephonic communication for hire within the State of Washington; also requiring payment in advance from month to month for local exchange service, etc., and also providing for objections to such orders by a person, firm, company, corporation or association of persons, engaged in the telephone business, and fixing the twenty-seventh day of October, 1914, at 9:30 o'clock A. M. at the Assembly Room of the New Seattle Chamber of Commerce as the time and place to hear objections to said rules.

That on the said twenty-seventh day of October, 1914, the Commission being represented by its chairman, Charles A. Reynolds, and Commissioners Arthur A. Lewis and Frank R. Spinning, and its attorney Scott Z. Henderson, the several telephone companies appearing in person or by their attorneys, objections were made by the companies to the proceedings and to the rules and to the promulgation thereof. The defendant, The Pacific Telephone and Telegraph Company, objected to the proceedings on the ground and for the reason that it claimed the Commission was without jurisdiction to promulgate said rules, and that said rules affected rates and could only be considered in a rate hearing based on valuation.

Section 85 of the Session Laws of 1911, Chapter 117, Page 595, is in part as follows:

"The Commission is hereby authorized and empowered to adopt, promulgate and issue rules and regulations covering the * * * trans-

mission and delivery of messages and conversations * * * and generally such rules as pertain to the comfort and convenience of the public concerning the subjects treated of in this Act. Such rules and regulations shall be promulgated and issued by the Commission on its own motion and shall be served on the public service companies affected thereby as other rules of the Commission are served. Any public service company affected thereby, and deeming such rules and regulations, or any of them, improper, unjust, unreasonable, or contrary to law, may, within twenty days from the date of service of such order upon it, file objections thereto, with the Commission, specifying the particular grounds for such objections. The Commission shall, upon receipt of such objections, fix a time and place for hearing the same, and after a full hearing may make such changes and modifications thereto, if any, as the evidence may justify."

This section disposes of the question of jurisdiction. It is apparent that any rule or regulation that would require or permit any service on the part of the company, or that would compel any patron of the company, to pay money that would not otherwise be required, would affect the rates, and if the fact that the rule or regulation affects rates prevents the Commission from acting under Section 85, no rule or regulation could be promulgated by the Commission.

The objections, therefore, of the telephone company were overruled by the Commission and testimony introduced by the telephone companies on said twenty-seventh day of October, 1914, and then continued to December 15, 1914, to give the companies an opportunity to present additional testimony. On December 15, 1914, further testimony was heard by the Commission, and the hearing continued to a date to be decided upon later. On July 1, 1915, final hearing was set for August 5, 1915, at which time all of the telephone companies doing business in the State were notified to appear and present such further testimony as they might desire, and all telephone companies in the State were at said time given opportunity to be heard, and were heard, and the matter was then finally submitted to the Commission for its decision.

Of the 159 telephone companies operating in the State of Washington, it was shown that twelve required a de-

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posit as a condition precedent to service. The method of applying deposits was described by Mr. Phillips, division commercial superintendent of The Pacific Telephone and Telegraph Company, as follows:

"Q. The \$5.00 deposit item then is not a part of the contract of The Pacific Telephone and Telegraph Company, is it?

A. No, it is not. (Transcript, p. 4.) * * * We have endeavored to use discretion in applying this deposit.

Q. Then as I understand it, this deposit is required of some subscribers whom you have doubts as to their ability to pay and is not required of other subscribers whom you are satisfied have ability to pay, is that right?

A. I cannot answer that just that way. We have used discretion and we might ask the deposit.

Q. What is the basis of your discretion?

A. We might ask a deposit of a man who was fully able to pay, but we have used our discretion in many ways, for instance, if he already had a business telephone and had had one for some time and wanted one in his residence, that would be one reason for waiving the deposit, and if we were supplying a telephone to a state or charitable institution, we would consider that a reason for waiving the deposit. There are many factors that are considered in waiving the deposit.

Q. You determine the question as to whether or not they will be required to pay, do you not?

A. We determine the question. (Transcript, p. 8)."

It will be seen that the question of whether or not a patron of the telephone company shall be required to make a deposit of a sum of money as a condition precedent to service is one of fact, to be decided by the various clerks in the employ of the telephone company. These clerks are permitted to exercise their discretion in the matter, there being no fixed rules by which the responsible patrons are separated from those of doubtful responsibility.

The total deposits required by The Pacific Telephone and Telegraph Company from its patrons in the State of Washington is approximately \$58,000. The Pacific Telephone and Telegraph Company, it will be seen, has found 11,600 of its patrons in the State of Washington, who are of doubtful responsibility.

This dividing of the patrons of a utility into classes on the basis of honesty or ability to pay, savors very strongly

of discrimination. The Constitution of our State, by strong inference, and the Statute, (Session Laws of 1911, Ch. 117, Sec. 40), expressly forbid discrimination. The statistics furnished by the companies based upon their experience of loss and gain as a result of the deposit are very unsatisfactory. Common experience shows that the average person who makes a deposit to cover a default, will allow it to be absorbed by the service. The company having the deposit as security for the default of the patron, will naturally absorb the deposit rather than enforce payment. These statistics do not prove that all money deposited and absorbed marks the amount the company would lose if no deposit were made.

The argument is advanced that it is not fair to the honest patron to require him to bear the burden of loss occasioned by the dishonest or impecunious patron. This argument is not justified by the facts. Telephone companies have at their command methods of enforcing collections which are not available to merchants or other business concerns generally. With proper management on the part of telephone companies it should not be necessary to require honest patrons to bear any burden which should be borne by others.

The present system of requiring some patrons to make deposits without requiring all patrons to make deposits, is a source of continual controversy and ill-will between the companies and many of their patrons. A man's honesty or willingness to pay cannot always be measured by the amount of property he may possess; neither can a person's honesty or ability to pay be measured always by his appearance.

The company claims to exercise a wise discretion but we doubt the wisdom of the exercise of discretion under such circumstances, even as a benefit to the company itself. It seems wholly impracticable to divide patrons of a telephone company into two classes, the honest and the doubtful. Such a division brings upon the company unnecessary criticism and complaints.

The Commission, therefore, is of opinion that if a deposit is to be required at all, it must be required of all patrons without discrimination. The present method and practice of the company is contrary to the basic principles of utility regulation and must, therefore, be discontinued. The question, therefore, resolves itself to this: Shall all patrons of telephone companies be required to deposit the security of \$5.00, or any other sum, as a condition precedent to service?

The telephone company has methods of collection not usual to most other classes of business. It has the right to collect in advance for service; it can refuse service to those who refuse to pay its charges in advance; or who refuse to pay for services rendered. (See recent decision of U. S. Supreme Court. *The Southwestern Telegraph and Telephone Company*, plaintiff in error, v. *Adelia P. Danaher*, in error, to the Supreme Court of the United States. Opinion by Justice Van Devanter.)

The telephone has become a modern necessity. Most citizens are required to have a telephone which can only be obtained by the payment of all charges due or which are payable in advance. To require payment in advance and then, in addition, to require a deposit, seems to be giving to the telephone company rights and privileges not accorded to any other business. This privilege of collecting in advance and refusing service to those indebted to the company, more than offsets the effect of the requirement imposed by law upon the company to afford service to all who apply, without discrimination.

It is, therefore, ordered, That the practice of requiring a deposit or installation fee, or any money, as a condition precedent to service by a telephone company in this State, other than as provided herein, is hereby cancelled, vacated and set aside as unreasonable and unjust, and telephone companies in this State are ordered and directed to discontinue said practice and to return to all persons heretofore making such deposits, or any deposit, as an installation fee, as a condition precedent to service or otherwise,

all moneys now in its possession or heretofore or hereafter claimed by it in the manner aforesaid, within twenty days from the date upon which this order becomes effective.

The Public Service Commission of Washington after considering all of the evidence submitted herein, and the rules and regulations of telephone companies relating to security for installation of instruments for payment of accounts for local exchange and long distance service rendered by said companies and for other purposes is of the opinion, finds and concludes, that the following Rules No. 1 and No. 2 are just, fair and reasonable rules and regulations and should be adopted, promulgated and issued by the Public Service Commission of Washington and followed and enforced by each and every telephone company owning, operating or managing any telephone line or part of telephone line used in the conducting of the business of affording telephone communication for hire within the State of Washington, viz:

RULE 1: No cash deposit or other security for the installation of instrument, for the payment of accounts for local exchange service or long distance service between points in the State of Washington, or for any other purpose, shall be required of any telephone subscriber by any telephone company owning, operating or managing any telephone line or part of telephone line used in the conduct of the business of affording telephonic communication for hire within the State of Washington, provided that a deposit may be required for any local or long distance call originating at a pay station.

RULE 2: Any telephone company may exact from any subscriber two months' rental in advance at the time of ordering service, such charge in no case to exceed the sum of \$5.00; if the service charge ordered shall exceed the sum of \$5.00 per month, the patron shall pay from month to month in advance. If the service charge shall not exceed the sum of \$5.00, the portion not absorbed in the first month's rental shall be applied upon the succeeding month's rental, and the patron shall thereafter pay from

month to month in advance. No advance payment shall be exacted from a patron of the company on account of change of residence or 'phone. The company may discontinue any telephone, private exchange or other instrumentality, device or utility of any subscriber and discontinue such subscriber's service on and after the expiration of ten days from the date on which any account for local exchange service or long distance service becomes due and payable (in advance or otherwise) when any such account remains unpaid after the expiration of ten days from said date.

Wherefore it is ordered, That said Rules No. 1 and No. 2 be, and the same hereby are, adopted, promulgated and issued.

Witness the Public Service Commission of Washington, this twenty-first day of August, 1915.

WISCONSIN.

Railroad Commission.

***In re* APPLICATION OF THE WASHINGTON COUNTY TELEPHONE COMPANY FOR AUTHORITY TO INCREASE RATES.**

U-445.

Decided July 30, 1915.

Increase in Rates Authorized.

Applicant sought authority to increase its rates for all classes of service 25 cents per month and to establish a charge of 50 cents per mile per month for excess mileage.

Book Value, Cost of Reproduction New and Cost of Reproduction New Less Depreciation Considered—Treatment of Property Account Subsequent to Purchase and Con- solidation of Competing Company Discussed.

Applicant claimed an investment of \$30,001.47. An approximate valuation by the Commission's engineer showed a reproduction cost new of \$17,587 and a reproduction cost new less depreciation of \$10,615. Applicant had previously purchased the property of a competing telephone company for \$15,000, a price in excess of its fair value, and after the purchase had scrapped a considerable amount of property in eliminating duplications which had existed under competitive conditions. The book value indicated that the property and plant account had not been credited with the cost new of this property removed from service. By the acquisition of the competing company, the applicant obtained a physical connection with the Wisconsin Telephone Company besides eliminating the duplication.

Held: That although certain advantages have accrued to subscribers from the unification of the telephone plants formerly competing, and the ability to secure long distance service, and although the subscribers should bear a portion of the fixed expenses which were incurred in thus eliminating a condition unfavorable to good telephone service, nevertheless the book value representing, as it does, a large investment necessary to eliminate a competing company from the field and also representing a considerable investment in physical property which has since been discarded, should not be accepted as a basis for fixing rates.

**Operating Expenses and Revenues Under Present and Proposed Rates,
and Amount Available, for Reserve for Depreciation and
Return on Investment Considered.**

The Commission considered the operating expenses and revenues of the applicant under the existing rates and under the proposed rates, and found that on a value of \$17,587, the amount under the present rates available for reserve for depreciation and return on investment would be only 9.5 per cent.; that as reserve for depreciation would amount to 6 or 7 per cent. of the cost new, the amount for return on investment would be only $3\frac{1}{2}$ per cent. at the most.

Under the increased rates the amount available for reserve for depreciation and return on investment would be about 14 per cent., assuming that the present operating expenses were normal.

Held: That the present operating expenses are below normal, and that with normal expenses the amount available under the new rates for reserve for depreciation and return on investment would be less than 12 per cent. per year.

Proposed Rates Held Reasonable — Additional Classifications Authorized — Charge for Excess Mileage Approved.

Held: That the total revenues which the proposed rates would yield cannot be considered unreasonable, and the increases asked for should be granted;

That the schedule should be amended to provide a single-party residence rate;

That the number of parties on a party line should be limited to four;

That the establishment of a charge of 50 cents per mile for excess mileage should be authorized.

OPINION AND DECISION.

Application in the above entitled matter was filed with the Commission March 6, 1915. The applicant is a Wisconsin corporation with its principal place of business in Schleisingerville, Wisconsin, and is a public utility engaged in the management and operation of a telephone system in Schleisingerville and vicinity.

The application sets forth that the lawful rates of the applicant in effect as of the date of making application for authority to increase rates were as follows: Residence party lines, \$1.00 per month; business party lines, \$1.25 per month; single-party lines, \$1.40 per month. The application further states that at the present rates the company

is unable to earn a reasonable return upon its investment, and that the price of labor and material has considerably advanced since the existing rate schedule was put in effect.

Application is therefore made for authority to increase the rates and to put in effect the following schedule:— Residence party lines, \$1.25 per month; business party lines, \$1.50 per month; single-party lines, within one mile of the central office, \$1.65 per month, with an addition of 50 cents per mile for excess radius.

Hearing was held at Madison, March 31, 1915. Appearances on behalf of the petitioner were *Joseph S. Guidice* and *Otto Klug*. There was no appearance in opposition. There is in the records, however, a protest against the application for authority to increase rates, carrying some 50 signatures, and stating that the parties who signed the protest object to an increase in telephone rates of the applicant, and that they do not wish to have their service continued if rates are to be increased. There is also in the record a communication from *John Rosenheimer, Jr.* of *Schleisingserville*, protesting against any increase of rates and alleging that the company's expenditures have not been as economical as they should be in some cases. The statements made by Mr. Rosenheimer were taken up at the time of the hearing, and it appears from the testimony, that in one particular at least, his statement has been due to a misunderstanding of the facts.

He stated that the Washington County Telephone Company had been paying a 6 per cent. dividend ever since it had been in business. The testimony shows that dividends have been paid as follows: 1908, 4 per cent.; 1909, 4 per cent.; 1910, 6 per cent.; 1911, 6 per cent.; 1912, 6 per cent.; and 1913, 5 per cent. During the fiscal period covered by the company's last report to the Commission a 6 per cent. dividend was paid, but as the fiscal period covered 18 months, the dividend rate for the period was really only 4 per cent. It appears from the testimony that the company changed its fiscal year to correspond with the fiscal year prescribed by the legislature of 1913, for reports of

telephone companies to the Commission, and that as a consequence, the last dividend of 6 per cent. was a dividend for a period of one and one-half years.

Another charge made by Mr. Rosenheimer is that in the last 3 years the company has purchased two automobiles "which also create extra, uncalled-for expenditure." It appears from the testimony that several years ago the company purchased a second-hand machine, and that last year this was traded in for another machine for the use of the manager. When it is borne in mind that the company had on December 31, 1914, 241 subscribers on rural lines, it will be apparent that economical operation of the plant and the furnishing of reasonable service on its lines require that some means of transportation be provided. We see no reason to question the reasonableness of expenditures which the company has made for this purpose.

It is not necessary at this point to review in detail the testimony offered on behalf of the company, but there are one or two points which should be mentioned as throwing some light upon the reasonableness of the company's reported operating expenses.

It appears that the practice of the company has not been to actually set aside a depreciation reserve, in order to eliminate the effect of unusual amounts of reconstruction on the income account of a single fiscal period. However, the company has kept a record of the cost of all reconstruction work and has added this cost as a separate item to the total of such expenses as are classified as current operating expenses in this Commission's classification of accounts. This amount during the 18 months ended December 31, 1914, was \$543.62. From such information as is available, it appears that the company has not included in its direct operating expenses, using this term as distinguished from total operating expenses, the cost of any reconstruction or of any new construction or extensions.

The company's investment as reported to this Commission as of December 31, 1914, was \$30,001.47. As this investment appears to be somewhat larger than has usually

been found for companies operating somewhat similar systems, the Commission instructed its engineering staff to make an approximate valuation of the property of the Washington County Telephone Company. This approximate valuation shows a reproduction cost of \$17,587 and a reproduction cost less depreciation of \$10,615.

It appears that a number of years ago, the Washington County Telephone Company purchased the property of a competing concern, the Cedar Lake Telephone Company, operating in practically the same territory, and paralleling its lines in many cases. For this property \$15,000 was paid, which apparently was considerable more than the reasonable value of the property. After the purchase a considerable amount of the property was scrapped in eliminating duplications which existed under competitive conditions. Whether the applicant credited its property and plant account with the cost of portions of its property which were scrapped, the evidence does not show, but the rather high book value of the property would seem to indicate that the property and plant account had not been credited with the cost new of property removed from service.

It appears that at the time of the purchase, the Cedar Lake Telephone Company had long distance connection with the lines of the Wisconsin Telephone Company, but that the Washington County company did not have such connection and was able to secure it only after taking over the property of the Cedar Lake company. That the long distance connection thus obtained, and the elimination of duplication were of sufficient value to the general body of subscribers to justify the company in charging rates at the present time sufficient to meet the fixed charges on its entire investment, a very large part of which is not represented by tangible property at the present time, is not clear from the records before us. That there have been certain advantages to subscribers from the unification of the telephone systems and the ability to secure long distance service, there appears to be no reason to doubt, but we do not feel that the book value of the property repre-

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senting, as it does, a large investment made necessary to eliminate a competing company from the field, and probably a large investment also in physical property which has been discarded, can be accepted as controlling for the purposes of this case. However, the company has given its subscribers certain advantages resulting from the consolidation and from the securing of long distance connection.

It is true that under the present laws, physical connection may be secured between telephone systems wherever reasonably necessary, but such connection even at the best, is not likely to be equivalent to service of equal extent furnished by a single company. The company has undertaken to furnish this more valuable service and although a part of the fixed expenses resulting from the consolidation should probably not be thrown back upon subscribers, but should be considered as a loss to the company resulting from its having operated in a competitive field, it seems to us to be reasonable to expect that subscribers should bear a portion of the fixed expenses which were incurred in eliminating a condition unfavorable to good telephone service.

This brings us to the question of operating revenues and expenses as indicative of the reasonableness of the proposed increase which the applicant seeks to have authorized. As previously stated, the last report which we have from the Washington County Telephone Company covers a period of 18 months ended December 31, 1914. This report shows operating revenues for the period amounting to \$5,527.38, and operating expenses including taxes, but exclusive of any provision for interest or depreciation, amounting to \$3,022.75, leaving \$2,504.63 available for interest and depreciation. During the same fiscal period, the non-operating revenues of the company as reported, amounted to \$303.56. If this amount is treated as an addition to the amount available for interest and depreciation, the total would be \$2,808.19. It appears however, from such information as we have, that in previous fiscal periods

the company has had no non-operating revenues. An examination of the reports for 1909, 1910, 1911, 1912, and 1913 does not disclose that the company had any non-operating revenues during those years, although there were probably small items not properly classified by the utility.

In estimating the future earnings of the utility, therefore, it would probably be unsafe to make any material difference in the general level of rates with the expectation that non-operating revenues would overcome an operating deficit. Judging from the results of operation as reported for the last fiscal period, the company is in need of some increase of telephone revenues. Assuming for the moment, that the fair value of the property is the same as the cost of reproducing it, or \$17,587, the amount available for interest and depreciation during the period under consideration was equivalent to approximately 14.2 per cent. of the value of the property. This is the same as a return for a period of one year of 9.5 per cent. Inasmuch as depreciation alone would probably amount to from 6 to 7 per cent. of the cost new of the property, it is apparent that the amount which would have been available for interest, had proper reservation for depreciation been made, would have been not more than $3\frac{1}{2}$ per cent. of the assumed fair value.

The company had on December 31, 1914, a total of 307 telephones. The report is defective in that it does not show clearly the changes in the number of installations for each class of service during the fiscal period, but judging from the rate of growth which telephone companies have generally been experiencing during the past two or three years, it is probable that if the rates had been \$3.00 per telephone higher than they were during the 18 month fiscal period, the total revenues for the period would have been about \$1,200 greater than they were, assuming, of course, the same degree of development of the business. If this assumption is correct, the effect of such increased rates would have been to yield a little over 21 per cent. of the cost new of the property for interest and depreciation for one and one-half

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years, or very slightly in excess of 14 per cent. for a single year.

The report for the past fiscal period differs very materially from the statement of earnings and expenses introduced at the time of the hearing which covered the calendar year 1914. The apparent differences in earnings may be accounted for by the larger average number of subscribers receiving service during the calendar year, but the difference in reported expenses is too large to be accounted for on any such basis.

As stated before, expenses for 18 months were reported to have been \$3,022.75. At the time of the hearing testimony was introduced to show that expenses for the calendar year exclusive of depreciation, amounted to \$2,688 which would be at the rate of \$4,032 for $1\frac{1}{2}$ years. It appears to us that neither the expenses as reported for the 18 months ended December 31, 1914, nor the expenses as testified to at the time of the hearing, can be accepted as normal.

From our study of telephone unit costs, we believe that the company could not be expected to furnish adequate service on metallic lines with proper restriction of the number of parties on a line, without incurring an average expense greater than that reported for the past fiscal period. It is doubtful, however, if normal expenses will be as high as those mentioned at the hearing. We believe that the company will hardly be in a position to furnish proper service over an extended period of time at an average direct operating expense of less than \$8.00 per telephone. Even this amount is conservative, if we are to judge by the reported expenses of some of the best maintained systems in the State, but probably it will not be inadequate.

If then, we estimate that the effect of the increased rates during the last fiscal period would have been to increase revenues about \$1,200 or to a total of \$6,727.38, and that normal expenses for the period would have been about \$3,600, there apparently would have been available for interest and depreciation about \$3,127.38 or approximately 17.7 per cent. for $1\frac{1}{2}$ years or slightly less than 12 per cent. per year.

If depreciation were to have been provided for upon as conservative a basis as 6 per cent. per year, there would have been available for interest slightly less than 6 per cent. upon a value equal to the cost new. Under these circumstances the total revenues which the proposed rates may be expected to yield can not well be considered unreasonable. There are, however, some adjustments and modifications of the schedule which should be made in order that the schedule may be so adjusted as to conform in a general way to the service requirements of various classes of subscribers. For single-party business telephones the rate of \$1.65 per month is reasonable, as are also the rates of \$1.50 per month and \$1.25 per month for party line business and residence service.

The schedule, however, provides no rate for single-party residence service, and such a rate will be provided by the order in this case. The rate of \$1.25 per month for rural service on metallic lines appears to be reasonable.

The last report of the applicant shows a total of 17 village subscribers on lines with more than four parties on a line. We believe that with the increased rates authorized by this decision, the number of parties on a village line should be not greater than four and the party line rates as authorized, should be applied.

It is, therefore, ordered, (1) That the applicant, the Washington County Telephone Company, may discontinue its present schedule of exchange rates and substitute therefor the following schedule:

Single-party business telephones.....	\$1 65 per month
Party line business telephones.....	1 50 per month
Single-party residence telephones.....	1 50 per month
Party line residence telephones.....	1 25 per month
Rural telephones	1 25 per month

(2) That on all except rural lines the number of subscribers on any party line shall not be greater than four.

(3) That rates for single-party lines shall apply within a radius of one mile from the central office and where such

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lines extend beyond a radius of one mile from the central office, an additional charge of 50 cents per month per mile or fraction thereof on all in excess of one mile radius shall be charged.

Rates as authorized by this order may be placed in effect August 1, 1915, provided that no increase in party line rates shall be made until all party lines, with the exception of rural lines, shall have been reduced to not more than four subscribers per line.

Dated at Madison, Wisconsin, this thirtieth day of July, 1915.

In re APPLICATION OF THE RANDOM LAKE TELEPHONE COMPANY FOR AUTHORITY TO INCREASE RATES.

U-446.

Decided July 30, 1915.

**Increase in Exchange Rates and Additional Classifications Authorized —
Establishment of 5-Cent Toll Rate for Service on All
Connecting Lines Approved.**

Applicant sought authority to increase its exchange rates and to charge \$12.00 per year for party line service and \$14.00 per year for private line service and also an additional rate of \$1.00 per year for desk telephones, 50 cents per year for extension bells, and 50 cents per year for each mile of excess mileage on single-party lines. Applicant also proposed to adjust its toll rates on all connecting lines, some of which were 10 cents and others 5 cents, and to charge 5 cents per call on all said lines.

The Commission considered the operating expenses of the company, and found that direct operating expense exclusive of reserve for depreciation and return on investment was a little less than \$8.00 per telephone for an eighteen-month period.

Held: That where a service of a commercial standard is to be furnished over metallic lines, with the number of subscribers per line properly limited and the upkeep handled promptly and efficiently, the cost, exclusive of interest and depreciation, is rarely lower than \$8.00 per telephone;

That the applicant cannot furnish adequate service at a direct cost as low as that reported;

That the proposed schedule of rates is reasonable, in fact it is doubtful whether the applicant's business can be permanently conducted with a reasonable amount of profit even under the proposed rates;

That the application for authority to establish a charge of 50 cents *per year* for excess mileage is evidently an error, and the applicant may file with the Commission a rate of not to exceed 50 cents *per month* per mile of excess mileage for single party lines, which rate will be approved when filed, without further formal action.

OPINION AND DECISION.

This application was filed with the Commission April 24, 1915. The application sets forth that the Random Lake Telephone Company is a public utility with its principal place of business in Random Lake, Wisconsin, and engaged in the management and operation of a telephone utility in that locality. The rates now in effect as stated in the application are \$10.00 per year, payable in advance for exchange service, with a rate of \$12.00 per year for desk telephones on party lines and with toll rates on some connecting lines of 10 cents per call and on other lines of 5 cents per call.

Application is made for authority to increase rates for the reason that applicant considers the present rate inadequate for the furnishing of good service and to permit it to provide for depreciation and pay dividends. Application is therefore made for authority to increase rates and to put in effect the following schedule: \$12.00 per year payable quarterly in advance for telephones on party lines, with an additional rate of \$2.00 per year, or \$14.00 in all, for private lines within village limits, and an additional rate of 50 cents per year for each mile outside of village limits on single party lines.

Application is also made for authority to charge \$1.00 per year in addition to the regular rate for desk telephones on party lines, and 50 cents a year for extension bells.

In connection with the application, applicant proposes to change its toll rates on all connecting lines to 5 cents per call.

There is one feature of this proposed schedule which should be noted before proceeding to a consideration of the reasonableness of the general schedule proposed. This is the charge of 50 cents *per year* per mile for each mile of

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line outside of village limits on private lines. Inasmuch as a rate of 50 cents *per year* per mile of line is insignificant in comparison with the cost of keeping up a mile of line and meeting interest and depreciation requirements thereon, it may be that applicant intended to ask for a rate of 50 cents *per month* per mile of line instead of 50 cents *per year*. Fifty cents per month per mile for additional radius for private lines beyond local exchange limits appears to be an entirely reasonable and conservative charge. No action will therefore be taken in this decision relative to this particular feature of the schedule, but a charge of not more than 50 cents per month per mile of line beyond local exchange limits for single party lines will be approved if filed by the Random Lake Telephone Company.

Hearing in this matter was held at Madison, May 27, 1915. *Mr. Emil C. Thiel* appeared for the applicant, and there was no appearance in opposition. It does not appear necessary to review with any degree of detail the testimony presented at the time of the hearing.

The most significant testimony bearing upon the reasonableness of a rate schedule such as that proposed by the applicant may be gleaned from its report to the Commission for the 18 month period ended December 31, 1914, and from the studies which the Commission has made in connection with other telephone rate cases involving conditions somewhat similar. From the report above referred to, it appears that the applicant had on December 31, 1914, a total of 358 subscribers, of whom 70 were listed as city or village subscribers, and 288 as rural subscribers. Of the 70 village subscribers, 50 were on single party lines, 14 were on two-party lines and 6 were on three-party lines. Of the rural subscribers all except one were on multi-party lines. The report also indicates that all lines are metallic and that the number of subscribers on rural lines averages about 13.

The wire plant included 87 miles of pole line, 385 miles of iron wire and 3900 feet of cable, indicating that there was an average of a little more than one-half mile of metal-

lic line and about one-quarter mile of pole line required to serve each subscriber.

Revenues as reported for the period were \$6,874.95, of which \$5,386.45 were exchange telephone earnings. These amounts seem to check very closely with the revenues which would be expected from the number of subscribers which the company has.

Operating expenses as reported, however, for the 18 month period under consideration are so low as to lead us to very seriously question the ability of any telephone company to continue to furnish adequate service at a cost as low as that reported. The total expenses aside from any allowance for interest and depreciation was \$2,578.59. The average number of subscribers during the period was about 325, so that the direct operating expense per subscriber was a little less than \$8.00 for 18 months. We do not believe that it requires any presentation of detailed proof to show that it is impossible for a telephone company to furnish adequate service at a direct cost nearly as low as this. In fact, it has generally been found that where service of a commercial standard has been furnished over metallic lines with the number of subscribers on a line properly limited and the upkeep handled promptly and efficiently, the cost, exclusive of interest and depreciation, has seldom remained permanently at a point lower than about \$8.00 per telephone. There are, of course, exceptions to this rule, but we have yet to find cases which would lead us to conclude that the Random Lake Telephone Company can furnish adequate service at a direct cost anywhere nearly as low as that reported for the last fiscal year.

At the time of filing the application, the applicant had an exchange at Random Lake furnishing service to its entire system. We are in receipt of information filed since the date of the hearing which indicates that at the present time the company is also operating a switchboard at Belgium at a cost for central office operating labor which will be about \$20.00 per month. The company furnishes batteries and apparently does all maintenance work ordina-

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rily performed by a telephone utility. Under all these circumstances it must be concluded that the schedule of rates asked for by the applicant is a reasonable one. In fact we doubt seriously whether applicant's business can be permanently conducted with a reasonable degree of profit even at the schedule which will be authorized in this decision. If the applicant is able, over a period of years, to furnish rural service over metallic lines at a rate of \$12.00 per year, and to keep its maintenance up to a proper level, it will be succeeding where a great many telephone companies have failed, and we do not consider it at all unlikely that the rate of \$12.00 per year will in the long run be found inadequate.

The other rates proposed are reasonable under the circumstances and we see no reason for discussing them.

The Commission is in receipt of a letter signed by the secretary of Local Union No. W. 6040 of the American Society of Equity, protesting against the increase which the company is asking for, and making the statement that if the increase is authorized, subscribers will order the service discontinued. There is no complaint regarding the standard of service furnished. This would be a rather unusual case if subscribers did not threaten to discontinue service in case rates were raised, but we do not believe that the threat of one or of a number of subscribers to discontinue service should interfere with our approval of the schedule proposed, nor with the application of that schedule by the company. Subscribers must not expect that service will be furnished to them at a loss, nor that they could permanently furnish it to themselves at a lower figure, if all costs incurred were to be considered. The continuance of the present rate schedule would almost inevitably mean that the service would deteriorate far below the standard which subscribers have a right to demand, and which they must expect to pay for. There is nothing submitted on behalf of the objectors to show that the proposed rate is in any way excessive, and objectors cannot show such a condition.

It is, therefore, ordered, (1) That the applicant, the Random Lake Telephone Company, be and the same hereby is authorized to discontinue its present schedule of telephone rates and to substitute therefor the following schedule:

- (a) Rural lines and village party lines.....\$12 00 per year
- (b) Single-party lines in local exchange limits.....\$14 00 per year
- (c) Desk telephones on all party lines.....\$1 00 additional per year
- (d) Extension bells.....50 cents additional per year
- (e) Tolls on all connecting lines.....5 cents per call

(2) That the applicant may file with the Commission a rate of not to exceed 50 cents per month per mile of line outside of local exchange limits for single-party lines, which rate will be approved, when filed, without further formal action.

Rates as herein fixed, may be collected quarterly in advance.

Dated at Madison, Wisconsin, this thirtieth day of July, 1915.

In re APPLICATION OF THE KEGONSA INDEPENDENT TELEPHONE COMPANY AND THE DEERFIELD TELEPHONE COMPANY FOR AUTHORITY TO PUT INTO EFFECT A FIVE-CENT TOLL RATE BETWEEN KEGONSA AND DEERFIELD.

U-447.

Decided July 30, 1915.

Establishment of Message Charge in Lieu of Free Service for Calls over Line Connecting Exchanges of Two Companies Authorized — Retention by Each Company of Tolls from Originating Calls Ordered.

OPINION AND DECISION.

Applicants in this case are public utilities engaged in the management and operation of local telephones systems connected by a through line which formerly was open for

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the use of subscribers for messages from the system of one company to that of the other with no charge in addition to regular exchange rates.

During the past winter, this line suffered somewhat from the sleet storm which caused a great deal of damage to telephone lines in southern Wisconsin generally, and the companies concerned are of the opinion that the maintenance of this line as a free line will be an unreasonable burden to the companies.

Hearing in this case was set for July 9, 1915. For the Kegonsa Independent Telephone Company, *Mr. O. A. Langemoc* appeared. The Deerfield Telephone Company was not represented at the hearing, but the Commission has a letter from this company advising that it is still desirous of putting a toll rate into effect, but it wishes to be allowed from four to six weeks to put its portion of the through line into proper condition, before applying the charge.

No formal testimony was taken at the time set for hearing as the records in the case appeared to be sufficiently complete without such testimony and as the representative of the Kegonsa company had little to present beyond a statement of the attitude of his company.

Although there may be, and probably are, cases where the requirements of telephone service are such that a toll rate on messages passing between telephone systems should not be authorized, we do not believe that this is such a case. No objection to the proposed rate has been offered by subscribers of either company, and from available facts it seems to us that the 5-cent rate is entirely reasonable. The Deerfield company must of course put its portion of the line into proper condition, and 30 days will be granted from the date of this order for the completion of this work.

It is, therefore, ordered, (1) That the applicants, the Kegonsa Independent Telephone Company and the Deerfield Telephone Company, be, and the same hereby are, authorized to establish a toll rate of 5 cents per message for all messages passing over the toll line connecting their exchange systems.

(2) That each company, shall, until some other practice shall be approved by the Commission, retain all revenues collected at its end of the toll line.

(3) That the Deerfield Telephone Company shall within 30 days place its portion of the toll line over which these messages will be sent in good condition, and that each company shall thereafter maintain its portion of such line in good condition.

Dated at Madison, Wisconsin, this thirtieth day of July, 1915.

In re APPLICATION OF THE PROSPECT, GUTHRIE AND BIG BEND
TELEPHONE COMPANY FOR AUTHORITY TO INCREASE RATES.

U-449.

Decided August 2, 1915.

**Increase in Rates Authorized — Additional Classifications Prescribed —
Penalty for Delayed Payment Authorized.**

Applicant sought authority to increase its rates from \$12.00 per year when payment was made in advance and \$13.00 per year when payment was not so made, to \$15.00 per year, payable in advance. Applicant also sought to retain an "other line" charge of 10 cents which it had been making.

The Commission considered the statements of operating revenues and expenses submitted by the company and also caused an examination of the company's books to be made by the Commission's accounting staff. Direct operating expenses, exclusive of taxes, reserve for depreciation and return on investment, were about \$8.30 per telephone per year. The reported investment was approximately \$41.00 per subscriber but it was doubtful whether the property could be reproduced for an amount anywhere near as low as the reported investment. On the reported investment the company had made, under the old rates, just about a fair return after allowing for reserve for depreciation, but this was due in part to the fact that revenues from connecting lines had been large enough to make up for the low rate charged rural lines for exchange service. The applicant made no distinction in rates between single-party, two-party and multi-party service.

Held: That in consideration of the higher class of service furnished single and two-party lines, some difference in rates should be made, although in the present case, the difference in cost of furnishing the service to the various classes of subscribers was not great:

That a rate of \$13.00 per year should be charged for rural lines and two-party residence service in the village, that \$14.00 per year should be charged for single-party residence and two-party business service in the village and that \$15.00 should be charged for single-party business service in the village;

That telephone bills should be payable quarterly, and if paid during the quarter in which the service paid for is being rendered should be net, if not paid during the quarter in which the service is rendered, a penalty of 25 cents per quarter should be applied on all such delinquent bills without discrimination;

That the "other line" charge should remain as at present.

OPINION AND DECISION.

This is an application under date of April 22, 1915, filed with the Commission on May 1, 1915, by the Prospect, Guthrie and Big Bend Telephone Company for authority to increase rates. Applicant is a telephone utility with its principal place of business in Big Bend, Waukesha County, and engaged in the management and operation of a telephone system in that vicinity.

The lawful rates of the applicant as set forth in the application are \$1.00 per month or \$12.00 per year if payment is made in advance, and \$13.00 per year if payment is not made in advance. There is an "other line" charge of 10 cents. Applicant states that the revenues have not been sufficient to meet the necessary expenses in connection with the business and pay a fair rate of interest on the investment. Authority is therefore asked to increase the rate for exchange service from \$12.00 per year to \$15.00 per year, payable in advance, and to retain the 10-cent "other line" charge.

Hearing in this matter was set for Madison, Wisconsin, June 11, 1915, but no appearances were entered. The report of the Prospect, Guthrie and Big Bend Telephone Company for the 18-month period ended December 31, 1914, shows that there were at the end of that period 329 subscribers receiving telephone service, all of which subscribers were on rural lines with the number of parties on a line properly limited, with possibly one or two exceptions. The report further shows that of the 38 rural lines,

34 were metallic and 4 grounded. The system also contains two metallic toll lines.

Revenues for the 18 months under consideration appear to have been reported with substantial accuracy, the total amount being \$7,008.25 made up of exchange telephone earnings of \$5,882.55 and earnings from connecting lines of \$1,125.70.

Operating expenses, however, appear to be incorrectly reported, probably because of a misunderstanding as to the requirements of the Commission's Classification of Accounts. However, the errors in reporting operating expenses seem to be errors in classification rather than in the amount of expenses reported for all purposes.

In order to have the most accurate data possible, the Commission had an examination of the books of the company made by a member of its accounting staff for the calendar year 1914. The lack of detailed evidence supporting certain accounting entries makes it practically impossible to determine the exact dividing line between the company's expenditures for the current operation and maintenance and its expenditures for other purposes. The same holds true to some extent regarding the division of expenses among the various departments of the business in accordance with the primary operating expense accounts of the Commission's classification. However, we believe that the results obtained by the Commission's accountant are sufficiently accurate for the purposes of this case, and it should be noted that when consideration is given to the fact that the company's report covers a period of 18 months instead of the last calendar year only, the total revenues and total expenses reported by the company check rather closely with the amounts obtained by the Commission's auditor. According to the auditor's report the revenues and expenses for the calendar year 1914 were as follows:

OPERATING REVENUES.

Exchange telephone earnings.....	\$4,026 94
Earnings from connecting lines.....	798 45
<hr/>	
TOTAL REVENUES	\$4,825 39

OPERATING EXPENSES.

Central office	\$1,138 62
Wire plant	864 82
Substation	412 06
Commercial	121 73
General	135 73
Undistributed	52 89
Taxes	121 63
<hr/>	
TOTAL	2,847 48
<hr/>	
AVAILABLE FOR INTEREST AND DEPRECIATION.....	\$1,977 91

According to the 1913 report, there were on June 30, 1913, a total of 337 subscribers, or 8 more than the reported number on December 31, 1914. Assuming that the number of 'phones reported for December 31, 1914, is the average number of 'phones in use during the calendar year, which seems to be a reasonable assumption in view of the number reported as of June 30, 1913, the operating expenses per telephone as shown by the auditor's report were about \$8.30, exclusive of taxes, interest and depreciation. For metallic service on a system with well constructed lines and proper limitations of the number of subscribers, the operating expenses do not appear to be at all abnormal. The investment as of December 31, 1914, as shown by the company's report amounted to \$13,353.92, or a little less than \$41.00 per subscriber, which seems to be a very conservative investment for the character of the business, in fact it is very doubtful whether the physical valuation would show that the property could be reproduced for anything near the amount reported as invested.

If we are to be guided entirely by the reported investment, it would appear that during the past calendar year

the company has been making just about a fair return upon its investment after making full provision for depreciation. Although the rate of \$12.00 per year appears to be unusually low for rural service on metallic lines, the revenues of the company have not been very much less than the full amount required. This has been due in part to the earnings from connecting lines which have been large enough to partly make up for the low rate on rural lines for exchange service. The company has no other rate for single-party or two-party lines than it has for its multi-party rural lines, nor has it expressed any desire that such a difference in rates should be established. We think that some difference should be made in these schedules to take into consideration the higher class of service furnished on one- and two-party lines, although the differences in cost of furnishing the service to the various classes of subscribers may not be very large in the present case.

In view of all the facts which we have been able to gather in this case, it seems that the application of the company cannot be granted in whole. However, some increase in rates is justifiable and will be provided for.

It is, therefore, ordered, That the applicant, the Prospect, Guthrie and Big Bend Telephone Company be, and the same hereby is, authorized to discontinue its present schedule of telephone rates for exchange service and to substitute therefor the following schedule:

Rural line telephones.....	\$13 00 per year
Two-party residence telephones — village.....	13 00 per year
One-party residence telephones — village.....	14 00 per year
Two-party business telephones — village.....	14 00 per year
One-party business telephones — village.....	15 00 per year

Telephone bills shall be payable quarterly, and if paid during the quarter in which the service paid for is being rendered, bills shall be net; if not paid during the quarter in which the service is rendered a penalty of 25 cents per quarter shall be applied on all such delinquent bills without discrimination. "Other line" charges shall remain as at present.

Rates as authorized in this decision may be placed in effect October 1, 1915, for the quarter beginning on that date.

Dated at Madison, Wisconsin, this second day of August, 1915.

IN THE MATTER OF THE PROPOSED EXTENSION OF THE WISCONSIN TELEPHONE COMPANY IN SECTION 19, TOWN OF HARMONY, ROCK COUNTY, WISCONSIN.

U-451.

Decided August 2, 1915.

Public Convenience and Necessity Held Not to Require Proposed Extension Into Occupied Territory.

The Wisconsin Telephone Company filed notice of a proposed extension of its lines in the town of Harmony to reach the residence of William Wright. The Rock County Telephone Company, which operates for local service in said town, filed its objection.

To enable the Wisconsin company to reach Mr. Wright's house it would be necessary to erect two poles, and if the line was built it would parallel the line of the Rock County company.

Mr. Wright had formerly been a subscriber of the Rock County company but because of dissatisfaction with the service furnished had discontinued the service of that company. The rates of the Wisconsin company were lower than those of the Rock County company and fewer subscribers were carried per line. It was averred that Mr. Wright had more occasion to talk with subscribers of the Wisconsin company than with those of the Rock County company, but the record failed to show this.

Held: That Mr. Wright's preference for the service of the Wisconsin company was probably due either to dissatisfaction with the service of the Rock County company arising from the failure of that company to string an additional wire to carry part of the subscribers now attached to the wire previously serving the Wright home, or the allurements of the lower rate afforded by the Wisconsin Telephone Company;

That a complaint as to rates or service is the proper method to seek the adjustment of such difficulties;

That public convenience and necessity do not require the construction of the extension proposed.

OPINION AND DECISION.

The Wisconsin Telephone Company filed a notice with the Commission of a proposed extension in the town of Harmony, Rock County, Wisconsin, to reach the residence of William Wright. The Rock County Telephone Company, which operates for local service in the said town, filed its objection, and the matter was heard at Janesville, Wisconsin, on July 29, 1915.

Mr. J. Carrado appeared for the Wisconsin Telephone Company and *Mr. R. Valentine* for the Rock County Telephone Company.

The evidence adduced at the hearing indicates that the residence of William Wright is situated on Milton avenue just beyond the limits of the city of Janesville. The highway on which the house fronts runs in a northwesterly direction and from it a second road branches off just below the Wright residence, running due north. Both of the telephone companies concerned have lines on Milton Avenue, but the line of the Wisconsin company leaves this highway at the corner below the Wright residence and follows the north and south road. To enable the Wisconsin company to reach Mr. Wright's home would require the erection of two poles, and the line, if built, would parallel the existing line of the Rock County Telephone Company.

The applicant for service had been a subscriber of the Rock County Telephone Company for several years prior to the spring of 1915. The contract with the company was discontinued following some dissatisfaction with the service that was being given. It appears that the line carried ten or eleven subscribers and Mr. Wright was of the opinion that when he first agreed to take the 'phone the manager had held out that another line would be put up within a short time to split the load. This had not been done. The Wisconsin company carries fewer subscribers on its line and charges a slightly lower rate, and, it was averred, furnishes communication with persons with whom Mr. Wright desires to talk more frequently than he has occasion to talk with subscribers attached to the line of the Rock County

company. There was no explanation given of this latter contention further than that Mr. Wright, who is engaged in general farming, exchanges work with neighbors who are subscribers of the Wisconsin company more often than he does with subscribers of the Rock County company. If there were some substantial reason why Mr. Wright's communications by telephone are addressed more frequently to persons who are subscribers of the Wisconsin Telephone Company than to subscribers of the other company, the Commission would be obliged to take it into consideration in determining whether or not the applicant's telephone requirements called for the extension now proposed to be made. There is nothing in the record, however, from which one can conclude that the Wisconsin company serves persons with whom Mr. Wright would have more in common either in a business or a social way, than he would have with the subscribers of the Rock County Telephone Company. Both companies give service generally throughout the neighborhood, both are giving extensive service in the city, and the Rock County company has a line extending by Mr. Wright's house and into the farming region beyond, while the Wisconsin company has not. It is difficult to escape a conclusion that the alleged preference for the service of the Wisconsin company is based on some other reason than business or social requirements. It is probable that discontent with the service of the Rock County Company arising upon the failure of the company to string an additional wire to carry part of the subscribers now attached to the wire previously serving the Wright home, or the allurements of the lower rate afforded by the Wisconsin Telephone Company, are the real moving causes of the desire for the service of the latter company. A complaint as to rates or as to service is the proper method to seek adjustment of difficulties of the characters mentioned.

It is clear that the evidence discloses no real reason for permitting the extension proposed to be made. Mr. Wright already has at his door the opportunity for service apparently suited to his needs. The Commission must find,

therefore, that public convenience and necessity do not require the construction of the extension as proposed.

Dated at Madison, Wisconsin, this second day of August, 1915.

IN THE MATTER OF THE PROPOSED EXTENSION OF THE LINES
OF THE CHIPPEWA COUNTY TELEPHONE COMPANY IN THE
TOWN OF LAFAYETTE, CHIPPEWA COUNTY, WISCONSIN.

U-452.

Decided August 11, 1915.

Public Convenience and Necessity Held Not to Require Proposed Extension Into Occupied Territory.

The Chippewa County Telephone Company filed notice of a proposed extension to serve a subscriber in the town of Lafayette. The Wisconsin Telephone Company, which operates in Lafayette for local service, filed its objection.

The line of the Chippewa company which it was desired to extend terminated at the southern limits of the town of Chippewa Falls, and the prospective subscriber resided in Lafayette, about three-quarters of a mile beyond. This prospective subscriber was a renter on a farm, the owner of which lived several miles north of Chippewa Falls and was a subscriber of the Chippewa company.

The agreement under which the renter occupied the farm called for payment of rental in shares and provided that the owner should have certain supervisory powers. Frequent communication between the landlord and the renter thus became necessary.

The Wisconsin company already had a line running by the farm giving universal service in Chippewa Falls, the market and business center of the resident upon the farm. The only requirement for service of the Chippewa company that the present subscriber had was to afford him communication with his landlord. Owing to possible changes in the ownership of the farm, its tenant or the condition of the lease, the continuance of this requirement for any length of time was problematic.

Held: That from the point of view of the proponent the extension would appear to be unwise and from the point of view of the objector it would be unfair;

That public convenience and necessity do not require the proposed extension.

OPINION AND DECISION.

Notice of a proposed extension of the lines of the Chippewa County Telephone Company to serve a subscriber

in Section 13 in the town of Lafayette, Chippewa County, Wisconsin, was served upon the Commission on July 7, 1915. The Wisconsin Telephone Company, which operates for local service in the town of Lafayette, filed its objection to the construction of the extension as proposed and a hearing was thus made necessary. The hearing was held at Chippewa Falls on July 27, 1915. The Chippewa County Telephone Company appeared by *T. J. Connor* and the Wisconsin Telephone Company by *P. J. Skolsky*. Through courtesy an extension of the time in which the case might be determined was agreed to by the proponent.

The testimony showed that the line of the Chippewa County company which it is desired to extend, terminates at the south limits of the city of Chippewa Falls, and the prospective subscriber whom it is wished to reach, resides approximately three-quarters of a mile beyond. This prospective subscriber is a renter on a farm belonging to a gentleman who lives several miles to the north of Chippewa Falls and who is at present a subscriber to the service of the Chippewa County company. The landlord is in reality the applicant for the extension of service herein considered.

The hearing developed that the present owner of the farm had purchased it but a short time before, and that the previous owner or occupant had had the service of the Wisconsin Telephone Company for a number of years. The renter now on the farm retained the Wisconsin company's 'phone for some time, appearing undecided as to whether or not he would permanently retain that service. At the time of the hearing the 'phone had been removed.

The agreement under which the renter occupies the farm in question calls for payment of the rental in "shares" and provides that as to certain of the crops the landlord shall have a supervisory or directory power. Frequent communications between the landlord and the renter thus become necessary. At present there is no method by which direct communication may be had from the home of the landlord to that of the renter, but there is a toll line to

which the landlord can get access by driving to the Wisconsin company's toll station at Eagle Point. This is stated to be a considerable inconvenience. If the extension proposed were allowed to be built, communication could be had directly.

The Wisconsin Telephone Company has a line running by the farm to which the Chippewa County company now proposes to extend. The former company gives universal service within the city of Chippewa Falls, which is the market and business center of the resident upon this farm. The only requirement for service of the Chippewa County company that the present occupant of the farm has, is to afford him communication with his landlord. Owing to changes that may take place in the ownership of the farm, its tenancy, or the condition of the lease, the continuance of this requirement through any length of time seems problematical. To permit the extension of a line of telephone to reach a subscriber already having at hand telephone service which would fulfill all of the ordinary requirements, depriving an existing system of a potential subscriber and allowing the proponent company to make an investment that may at any time become idle, would seem to be ruthless treatment of the principle upon which the Anti-Duplication Act is based. The whole spirit of the law is to make for permanency, for settled conditions in the telephone field, and for that sense of security of telephone investments that comes from a certainty that no encroachment will be permitted upon territory already efficiently served when the company occupying it has not overbuilt its natural boundaries. Considered from the viewpoint of the proponent company this extension, if allowed, would appear unwise; considered from the viewpoint of the objector, it would be unfair.

The lessee of the farm, as has been said, already has at hand an opportunity to obtain service that would fill his ordinary needs. He did not appear at the hearing and no testimony was offered to prove that he had need of other service than that at hand for any purpose except occa-

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sional communications with his landlord. The landlord himself, who appeared in support of the proposal, has service in his home that is supposed likewise to meet the usual requirements. What he desires is not telephone service of a new company, but more of the same service that he already has. It is but natural for people to wish to get more for their money. However, when a subscriber to telephone service is afforded communication at a fair rental with his neighbors and with his business center he may consider that, so far as extent of service is considered, he should expect no more without an additional charge. Messages that pass beyond the natural delimitations of the community in which the subscriber has his ordinary business and social interests may be classed as toll messages for which an extra charge may be made. The fact that a subscriber has made an investment in a locality beyond these natural limits does not entitle him to telephone accommodations to reach that locality without extra charge.

It is considered that a public convenience and necessity for the extension proposed can not be said to exist, and authority to construct the extension is refused.

Dated at Madison, Wisconsin, this eleventh day of August, 1915.

INVESTIGATION ON MOTION OF THE COMMISSION OF THE ALLEGED VIOLATION OF CHAPTER 610 OF THE LAWS OF 1913 BY THE UNION TELEPHONE COMPANY OF PRAIRIE DU CHIEN, HENRY SCHULTZ, JOSEPH RAU, MARTIN SEBASTOAN, *et al.*

U-455.

Decided August 18, 1915.

Extension of Line Into Occupied Territory Made Without Permission of Commission Permitted to Remain — Completed Extensions Made Without Consent of Commission Treated as Proposed in Determining Question of Public Convenience and Necessity.

The Western Crawford County Farmers Telephone Company complained that the Union Telephone Company and Henry Schultz *et al.* had

extended a line giving local service into the town in which the complainant was already operating for local service.

The line complained of was owned by Schultz *et al.* and extended from the city limits of Prairie du Chien about three and one-half miles in an easterly direction. For about the first half of this distance it paralleled the complainant's lines. The easterly half of the line had been constructed for some time and had formerly connected with the line of one Nickerson, whose line was still connected with the exchange of the Union company in Prairie du Chien. Service had been rendered to Schultz *et al.* over the Nickerson line and their own line until Nickerson cut the line above him and left Schultz *et al.* stranded. Later Schultz *et al.* extended the part of their line already built, to the city limits and there connected with the Union company's line.

The business of Schultz *et al.* was all in the direction of Prairie du Chien and not in the direction of Eastman, where the complainant's exchange was located. Besides this fact, because the complainant's line had been cut off above Schultz *et al.*, it would be necessary for them in order to reach Eastman to pay a switching fee.

Held: That the construction of the line complained of was carried on in good faith and a substantial part had been built prior to the effective date of the Anti-Duplication Act, and this part, if no extensions were allowed would be of little use, if any;

That as the subscribers involved might have had, except for Nickerson's action, the service which they now have without any possible ground for objection by the complainant, and as no arrangements were made, in extending the part already built to the city, looking to the acquisition of new subscribers, and furthermore as the service offered by the complainant was not suited to the respondent's needs and was not the service to which they would be normally entitled owing to the fact that the line to which they would connect had been cut so as to deprive them of direct communication through the complainant's Eastman exchange, little if any harm had been done to the complainant:

That the persons served by the line have a clear need of the service thus afforded;

That the construction in question has not deprived the complainant of subscribers to which it would be properly entitled:

That the construction would have been sanctioned in the first instance if the matter had been properly brought to the attention of the Commission and that therefore the complaint should be dismissed.

OPINION AND DECISION.

This proceeding is the result of a complaint by the Western Crawford County Farmers Telephone Company that the respondents herein have constructed a telephone line

for local service or have extended a line giving local service in or into the town in which the complainant company is operating for local service, and that such telephone line was constructed without serving upon the complainant or upon the Commission the notice in writing required by law.

Hearings in the matter were held at Prairie du Chien on April 12 and May 18, 1915. *Thomas O'Neill, E. E. Trautch* and *P. J. Welch* appeared for the complainant; *W. L. Hintz* appeared for the Union Telephone Company, and *Henry Schultz, Joseph Rau* and *Martin Sebastoan* in behalf of the other respondents.

The evidence shows substantially the following situation. The complainant company furnishes local service in the town of Prairie du Chien and has one line extending into the city to connect with the company giving city service. Service in the city of Prairie du Chien is furnished by the Union Telephone Company (hereinafter referred to as the Union company) which furnishes switching service also for several connecting lines, including those of complainant company. Complainant has a number of exchanges at various points in Crawford County, serving a large number of subscribers. The line alleged to have been constructed by the respondents in violation of law extends from the city limits some three and one-half miles in an easterly direction. For about one-half the distance it follows what is known as the Black River road, paralleling for that distance complainant's lines, and crossing them two or three times. The line is owned by *Henry Schultz, Joseph Rau, Martin Sebastoan, Wm. Kaiser* and *J. A. Teynor*, though the latter was not mentioned in the complaint, who furnished the poles, wire and instruments, and did the building themselves. Each party is required to keep his part of the line in repair.

The situation is somewhat out of the ordinary. Part of the line—about the east half apparently—leaves the Black River road, and runs in a northeasterly direction. This part has been constructed for some time and was formerly connected with the private line of *Mr. Nickerson*.

The Nickerson line was, and still is, connected with the exchange of the Union company. The above described portion was built by Messrs. Rau, Sebastoan and Teynor, with the consent of Mr. Nickerson, to connect with his line and give them service to and in Prairie du Chien to meet their needs. They received service in this manner until Nickerson, on the ground that there were too many on his line to give good service, cut the line above him and left them stranded. All this occurred before the passage of the Anti-Duplication Act.

The individual respondents contend—and apparently with justice—that the service offered by complainant company does not meet their needs, and that for them to be obliged to content themselves with its service, would be a hardship. All are engaged in truck and fruit farming, and communication to and from the city is important for them. They have little business in the direction towards Eastman, at which point complainant has an exchange, through which they would be entitled to exchange service were they subscribers of complainant company. It appears, moreover, that complainant's line for local service has been cut above them so that to get Eastman, under the present circumstances, they would have to call the city exchange at Prairie du Chien, establish communication via Bridgeport, and pay a switching fee in so doing. Furthermore, were they subscribers of complainant, they would have to pay a switching fee for every call to Prairie du Chien.

After Nickerson cut the line, Rau, Sebastoan and Teyner were left with a line connected up with no exchange, and in the fall of 1914 they extended the part of the line already built to the city limits where it was attached to the lines of the Union company. It appears that, with the exception of Schultz and Kaiser, the parties involved are enjoying the same service they formerly enjoyed, to a substantial extent over the same line, and to which they would undoubtedly be lawfully entitled at the present time had not Nickerson refused them the use of the line to which they were previously connected.

Schultz, who lives only about 50 feet east of the city limits, testified that he attempted in 1912 to secure connection with the Nickerson line, and that this was promised him, but that nothing ever came of it. The complainant company is a mutual company, each stockholder being subject to assessment. Mr. Schultz spoke to one of the officers of complainant company several times with regard to getting service, but never agreed that he could properly be called upon to pay a switching charge for each call to the city and also assessments as a stockholder, and not receive full service, which he could not get owing to the lines having been cut between his point of connection and the Eastman exchange of the complainant, with which he should naturally have been connected. Mr. Kaiser, whom complainant alleges it lost as a subscriber as a result of the construction of the new line, was apparently never connected up with complainant's system, but gave testimony to much the same effect as that of Mr. Schultz — that his business is all towards Prairie du Chien, that he has practically none in the other direction, and that when he saw the line was cut above him he did not feel inclined to connect up, but desired to sell the share of stock that he owned. In that connection a letter to him from complainant's secretary at the time was put in evidence, in which the writer admitted that the cutting of the line put Kaiser in a very unsatisfactory situation, but stated that he knew of no one at just then who was in the market for a share of stock.

Kaiser lives about a mile and a half from the city, and it was stated that the Nickerson line runs close to his house. Apparently he, as well as the others, with the possible exception of Schultz, would very easily and very properly have been connected with the existing Nickerson line had the owner been inclined to permit it. Had this happened there would have been no possible ground for the present complaint.

The Commission has been disposed to treat violations of Chapter 610 of the Laws of 1913 as though the construction complained of were merely proposed and to overlook the

omission of the proceedings prescribed by the statute unless a finding adverse to such construction would have been necessary had the proper proceeding been taken in the first instance. *In re Proposed Extension East Valley Telephone Company*,* 1914, 14 W. R. C. R. 802, and *In re Investigation Westboro Telephone Company's Alleged Violation Chapter 610, Laws of 1913*,† 16 W. R. C. R. In the present case the testimony indicates that the construction was carried on in entire good faith. A substantial part had been built before Chapter 610 went into effect. This part, were no extensions to be allowed, would probably be of little use, if any. The five individuals involved might very easily have the service they now enjoy without any possible ground for objection on the part of complainant, and three of them did for a time actually have such service. In extending the part already built to the city no arrangements were made looking to new subscribers. The service offered by complainant, on the other hand, does not appear suited to respondents' needs, and, furthermore, it is not the service to which they would normally be entitled as subscribers, owing to the fact that the line to which they would connect has been cut so as to deprive them of direct communications through complainant's Eastman exchange. Schultz lives very near the city limits. Were he inside the city limits he would be entitled to direct service of the Union company.

Thus summarized it appears that the construction of the new line has done little, if any, harm to complainant, and that the persons served by the line have a clear need of the telephone service they are thus afforded which could not be satisfied by the complainant. All things considered, the Commission cannot conclude that the construction in question has deprived complainant of subscribers to which it would properly be entitled, or that the construction would not have been sanctioned in the first instance had the mat-

* See Commission Leaflet No. 34, p. 1117.

† See Commission Leaflet No. 42, p. 272.

ter been properly brought to the attention of the Commission. The complaint is therefore dismissed.

Dated at Madison, Wisconsin, this eighteenth day of August, 1915.

IN THE MATTER OF THE INVESTIGATION ON MOTION OF THE
COMMISSION OF THE ALLEGED VIOLATION OF CHAPTER 610
OF THE LAWS OF 1913 BY THE GRANGE HALL FARMERS
TELEPHONE COMPANY.

U-456.

Decided August 18, 1915.

All Service Over Extension Built in Occupied Territory Without Authority of the Commission Ordered Discontinued.

This decision is a review of the previous decision of the Commission issued August 13, 1914, *In re Proposed Extension of the Lines of the Grange Hall Farmers Telephone Company.**

The Grange Hall company had applied for authority to extend its lines in the town of Rock Elm, stating that the proposed line interfered with no other company. Relying on this statement, the Commission authorized the company to proceed with the extension. Later the Highland Telephone Company notified the Commission that the Grange Hall company was building a line parallel to its line and objected to this invasion. No written notice of the proposed extension, as required by statute, had been served upon the Highland company.

Upon being informed by the Commission that notice must be served on the Highland company and on the Commission, said notice was filed. On hearing, the Commission found that the line was not warranted by public convenience and necessity and that had the matter been properly brought before it, authority for the construction would have been refused. Thereupon the Commission ordered that the Grange Hall company and the individual patrons of the line should abandon its use.

The Grange Hall company thereafter refused service to the patrons of this line through the Rock Elm switchboard to which the line had previously been connected, but use of the line by the farmers connected to it was not discontinued.

The admitted reason for the construction of the line was the belief that service could be furnished at a much lower rate than the Highland company charged. The Commission found that it was doubtful if service of the grade furnished by the Highland company could be furnished at a lower rate than the present rate charged by the Highland company.

* See Commission Leaflet No. 34, p. 1133.

Held: That as the Highland company had a line in this territory apparently capable of furnishing good service and supposedly put there in response to a demand, either direct or indirect, for such a grade of service, it is entitled to protection against the competition of a line built as an experiment to give service to a minority who have conceived the idea that a different character of construction and a different management will result in lower telephone costs;

That the use of the line in question must be discontinued not only as between the patrons connected to it and the Rock Elm central office but also as a neighborhood line.

OPINION AND DECISION.

This decision is in effect a review of the previous decision of the Commission issued August 13, 1914, *In re Proposed Extension of the Lines of the Grange Hall Farmers Telephone Company*,* 15 W. R. C. R. 11-17. In order that this case may be clearly understood it is necessary to review briefly the facts that were brought out in the former investigation.

That case arose upon an application of the Grange Hall Farmers Telephone Company for authority to extend its lines in the town of Rock Elm, Pierce County, Wisconsin. The first notice of the proposed extension was served upon the Commission December 13, 1913. It was stated that the line interfered with no other company. It was clear that the Grange Hall Farmers Telephone Company understood the requirements of Chapter 610 of the Laws of 1913, for in serving its notice upon the Commission it used the blank form provided by the Commission for that purpose, and included in the letter accompanying the notice a request for an interpretation of the Anti-Duplication Act as applied to a situation existing in another portion of its system. Relying upon the statement thus made, the Commission advised the Grange Hall Farmers Telephone Company at the expiration of 20 days that it was authorized to proceed with the extension.

In the spring of 1914 the Highland Telephone Company notified the Commission that the Grange Hall Farmers Tele-

* See Commission Leaflet No. 34, p. 1133.

phone Company was proceeding to haul poles along the route of the Highland Telephone Company's line with the apparent intention of constructing a line parallel thereto, and that the Highland Telephone Company wished to object to such invasion of its territory. Upon inquiry the Commission found that the Highland Telephone Company was operating for local service in the town in which the extension was being made, that the Grange Hall Farmers Telephone Company had not filed written notice upon the Highland Telephone Company as provided by statute, and that the line under construction, far from "not interfering with any other company," in fact would parallel a line of the Highland Telephone Company.

The Grange Hall company was thereupon informed that it must file the statutory notice with the Highland Telephone Company and with the Commission and thus bring before the Commission for determination the question of whether or not public convenience and necessity required the construction of the extension. The notice was filed and a hearing was held on May 14, 1914. Instead of waiting the outcome of the proceeding, the Grange Hall Farmers Telephone Company, or the individual subscribers to be served by the line in question, hastened with the work of constructing the line and succeeded in placing it in service prior to the hearing. The evidence showed clearly that the line was not warranted by public convenience and necessity. This being so, and the line having been constructed without compliance with the provisions of the statute, the Commission had no alternative than to enter a finding that had the statutory notices been served and the case properly brought before it prior to the construction of the line, it would have refused its authority for the construction. The Commission ordered that the Grange Hall Farmers Telephone Company and the individual patrons of the new line should, within a reasonable time, abandon its use, and stated if such service were not discontinued the matter would be certified to the attorney-general for prosecution.

On November 10, 1914, the Highland Telephone Company

filed a complaint with the Commission to the effect that the Grange Hall Farmers Telephone Company had disregarded the finding of the Commission and was continuing the use of the extension which they had constructed in violation of law, or that the farmers who were attached to the line so constructed were continuing its use. A notice of investigation was thereupon issued and a hearing was held at Woodville on December 18, 1914. *Mr. Zimmer* appeared for the persons who are using the line in question, and *Mr. Joe Johnson* appeared for the Highland Telephone Company.

The hearing disclosed that the Grange Hall Farmers Telephone Company had in fact refused service to the patrons of the line through its Rock Elm switchboard to which the line had previously been constructed. Use of the line by the farmers connected to it was not discontinued, however, so that the intent of the order of August 13, 1914, had not been entirely observed. It was stated that the order of the Commission had not been clearly understood by the persons using the line, and that they wished to urge new reasons for continuing its use. This proceeding was, therefore, in the nature of a review.

The facts relating to the unlawful construction of the line and the requirements of the law with respect to the duties of the Commission in dealing therewith have not been changed by lapse of time. In this regard, therefore, nothing can be altered in or added to the decision of the Commission of August 13, 1914. It only remains to define a little more clearly the effect of the decision entered at that time, and to meet the most serious contentions that were made at the second hearing in justification of the construction of the line.

The admitted reason for the construction of the line was the impression that telephone service can be given at a much lower rate than the Highland Telephone Company charges. The representative of the users of the line testified that he wanted telephone service and that he desired service along the highway on which this line was built because he wished to communicate with his neighbors along

that highway. He stated that he did not wish to take the service of the Highland Telephone Company, but "I made up my mind that it would be cheaper to run a line." Testimony was received as to the estimates that had been made by the projectors of this new line of the cost of construction and of furnishing service. It appeared that they expected to complete $5\frac{1}{2}$ miles of line and to place it in condition to operate at a total cost of approximately \$390. Switching service was to be effected by the Grange Hall Farmers Telephone Company at a cost of \$3.00 per subscriber. Fifty cents per 'phone per year was considered adequate for maintenance and repairs. This impression of the cost of construction and operation of telephone lines was so uniformly held by the witnesses that it calls for some discussion.

The rate charged by the Highland Telephone Company for rural service is \$12.00 per telephone per year. Comparison of this annual rate with the probable annual cost of service over the line now under consideration is made difficult by the fact that the Highland company's service is furnished over a metallic line with a limited number of subscribers, while the service which the farmers are now receiving is furnished over a grounded line with an excessive number of subscribers. It is unfair to attempt any comparison between the rate charged by the company furnishing telephone service upon a commercial basis and including presumably a reasonable allowance for interest on capital invested and for depreciation of the property, and the minimum annual cash disbursement at which farmers can secure grounded line telephone service with an excessive number of subscribers on the line and with no allowance made for depreciation or interest or for the labor required to keep up the line. In the present case the patrons of the line declare that they can furnish adequate service at a cost of construction as set forth above and at an annual charge of \$3.00 per subscriber. Just what character of service would be considered adequate by these subscribers is not fully determined. It may be said generally that

what constitutes adequate service seems to depend very materially upon who is furnishing the service. Where it is being furnished on a commercial basis patrons are seldom slow to point out the short-comings of telephone service over cheaply constructed grounded lines with the number of subscribers on a line not properly limited. Where, however, the service is furnished on a cooperative basis, patrons will often accept a very much lower standard of service than they would be willing to accept from a commercial company. We assume in this case that by adequate service the witnesses mean not merely service which will remain acceptable while the experience of having a telephone in the house remains a novelty, but such service as is usually demanded by persons accustomed to having telephone service and who are acquainted with the standards at which such service may be maintained.

The \$3.00 per subscriber at which the patrons of the line contend that they will receive service covers only the central office expense. Indeed, it is doubtful if this charge covers the actual cost of switching service in this instance. No allowance is made for interest on the capital invested, for accumulating a reserve to replace the property at the end of its useful life, for the cost of materials and supplies used in keeping up the lines and instruments, for the renewal of batteries, or for taxes. This recital of omissions from the estimates of expense is sufficient to show the unsoundness of the opinion held with relation to operating cost. The attitude which it seems the patrons of this line must have taken is that the only consideration of importance to them is the amount which they must actually disburse for a few years during the early life of the system before depreciation takes effect. It may be argued that the patrons to be served should be permitted to furnish themselves with as poor service as they care to put up with. But the Highland Telephone Company, it must be remembered, already had a line in this territory, apparently capable of furnishing good service and supposedly put there in response to a demand, either direct or indirect, for such a

grade of service. It is, therefore, entitled to protection against the competition of a line built as an experiment, to give service to a minority who have conceived the idea that a different character of construction and a different management will result in lower telephone costs.

If the patrons on the new line were to furnish the equipment necessary to give metallic service with the limited number of parties on a line their investment per subscriber would scarcely be less than \$40.00. Interest and depreciation on this conservative amount, which, it may be stated, must inevitably be borne in some form or other even if not recurring annually as a cash disbursement, would amount to \$5.60 if figured at 14 per cent. or assuming that a rate of interest of 5 per cent. on the investment and a rate of depreciation of 7 per cent. would be adequate, the annual expense as distinguished from the annual expenditure, would be \$4.80 per 'phone. The cost of renewing batteries would be from 50 cents to \$1.00 per year and there would necessarily be some expense for materials for repairing the line. The cost of central office service, with proper provisions for interest on capital invested and for depreciation of property and with the allowance for replacing batteries and purchasing materials for repairs, would, in all human probability, make up a total of from \$9.00 to \$10.00 per year. This estimate does not include an allowance for labor furnished by the patrons of the line. If proper allowance were made for this item the full cost of the service could not reasonably be expected to be much, if any, less than the rate now charged by the Highland Telephone Company.

Of course, the position taken by the patrons of the line is that they can afford to donate a certain amount of labor for maintaining the line and which the Highland Telephone Company, being operated on a commercial basis, cannot afford to do. But it cannot be maintained that the inclusion in the rate of an amount sufficient to cover the cost of labor for repairing lines and instruments and for administering the business is an improper item to include in estimating the cost of telephone service. If there were no telephone service

being furnished in the territory, the projectors of a new line might well consider as a matter of policy whether they could afford to pay a telephone company a rate sufficient to meet all the expenses incurred in furnishing telephone service or whether it would be better to pay a telephone company for only such portion of the service as each individual would be incapable of furnishing for himself. After a company has been induced to enter into the territory to give service it is too late to consider this preliminary problem.

On reason and on the experience of this Commission, therefore, it would seem that the belief of the builders of this line that telephone service could be given at a cost of but a few dollars a year is mistaken. Perhaps the candid admission of other individuals who have constructed a telephone line under similar conditions and with a like belief, that experience has proven them to have been misguided will be convincing. We quote from a letter in the files of the Commission received from the officers of an association owning a rural telephone line and requesting the assistance of the Commission in certain difficulties in which the company had fallen:

"We were somewhat ignorant about cost of building telephone lines when we started and were made to believe we could build for \$10.00 each starting with 25 members (each member to buy his own 'phone besides), but before we finished the first outfit one man put in \$100 in cash and labor, another put in \$50.00 in cash and labor, two more put in \$25.00 each, one more \$20.00 and one more \$15.00, all the rest paying \$10.00 each. Since starting the first system we have found out that we can not build lines for \$10.00 for each member, and in order not to have the charter members build the lines for new members such new members are required to pay in \$25.00 each to build such lines, or else build the stubs of lines themselves and pay \$10.00 each for connecting up with central."

Many similar instances have come under the observation of the Commission. In fact it is almost a moral certainty that if the builders of the line in question continued giving service their experience would prove the same as that of the writer of the letter from which the quotation is taken. We

submit that the testimony of this gentleman is an apt illustration of the truth of the contentions we have made.

The Grange Hall Farmers Telephone Company acting as an entity distinct from the patrons of the line has apparently discontinued service in accordance with the Commission's order of August 13, 1914. The patrons on the line, however, have not discontinued its use as a neighborhood convenience. It does not appear necessary to issue a formal order in the case, but merely to state a little more definitely the intention of the order of August 13, 1914.

The use of the line in question must be discontinued not only as between the patrons connected to it and the Rock Elm central office, but as a neighborhood line as well. One month should be a sufficient time in which to permit the parties now receiving service over this line to make other arrangements for telephone service if they desire it. Unless all connections between this line and the telephone instruments on the premises of subscribers are discontinued within one month from the date of this decision, the matter will be certified to the attorney-general for prosecution.

Dated at Madison, Wisconsin, this eighteenth day of August, 1915.

II. R. BLAY *et al.* v. THE STRAWBERRY TELEPHONE COMPANY
AND LINES No. 1, 2, 3, 5, 7, 9, 11, 12, 13, 18 AND 19, RUN-
NING INTO REWEY.

U-457.

Decided August 27, 1915.

Installation of Toll Station and Improvement of Service Ordered.

Complainant alleged that the service at the central office in Rewey used by the lines named in the caption was inadequate, claiming that at times it was impossible to secure connection with other lines through central and that at other times it was impossible to hear clearly after the connection had been made.

The switchboard was located in a residence at Rewey and was attended by a woman who lived there. When a person desired to send a toll message from Rewey the operator permitted him to use the switchboard

set, which practice made it impossible for switchboard service to be rendered until the toll message was complete.

The poor service complained of was due in a large measure to the inadequate maintenance of lines and equipment by the companies which resulted from the decentralized responsibility for repairs.

Held: That a toll station for the use of the public should be installed at the Rewey exchange;

That service would be materially improved if the responsibility for maintenance was centralized upon some competent person to be compensated by the various companies jointly;

That the respondent should conform to the standards for telephone service established by the Commission.

OPINION AND DECISION.

The petition, which is signed by 26 persons, alleges in substance that the service at the central station at Rewey and on the lines designated above is inadequate. The Commission is, therefore, asked to take such action as it deems just in the premises.

No answer was filed by the respondent.

A hearing was held at Rewey on December 4, 1914. *H. R. Blay* appeared for the petitioners and *Pierce Nolen* for The Strawberry Telephone Company. It developed at the hearing that the lines designated in the complaint are owned by independent companies and merely connect with the Rewey exchange. *Peter Steffen* appeared for Line No. 1, otherwise known as the Lee line. *James Numden* represented Line No. 2, which is known as the Willie line. Line No. 3 is known as the Nickel Plate line and was not represented. The Rewey-Mineral Point Telephone Company owns lines Nos. 5, 7, and 19 and was represented by *G. H. Jones*. Lines Nos. 9 and 11, which are known as the Livingston lines, were not represented. The Independent Telephone Company owns line No. 12 and was represented by *August Nodolf*. Line No. 13 is known as the Log Cabin line and was represented by *John Steffen*. Line No. 19 is owned by the Platteville, Rewey and Ellenboro Telephone Company which was not represented.

The testimony shows that the switchboard at Rewey which is used jointly by all of the lines named in the com-

plaint, is owned jointly by the Strawberry Telephone, Line No. 1 (Lee line) and Line No. 2 (Willie line). However, two other lines, namely Line No. 12 (Independent Telephone Company) and Line No. 13 (Log Cabin) share in the maintenance of the switchboard. The other lines apparently are switched free of charge.

Witnesses complained of the switchboard service and of the condition of the various lines. Instances were cited where patrons have been unable to secure connection with other lines at central, and where they have found it impossible to hear distinctly when connection was finally secured. A doctor testified that on several occasions relatives or friends of patients have been obliged to drive to his residence in order to secure his services in emergencies owing to their inability to call him over the telephone. The switchboard is located in a residence at Rewey and is attended by the woman who lives there. When a person desires to send a toll message from Rewey, the operator permits him to use the switchboard set, which practice makes it impossible for switchboard service to be rendered until the toll message is completed. "Trouble" on the various lines is supposed to be cared for by some official on each line, but the responsibility for such repairs is so decentralized as to result in poor service. It was suggested at the hearing that the various lines employ jointly an experienced telephone man who should devote all of his time or as much as is necessary to the maintenance of the switchboard at Rewey and the various lines connecting therewith. The Commission is not advised that a man has been employed for this work.

It is apparent from the testimony that the poor service which brought about this complaint results in a large measure from the inadequate maintenance of lines and equipment by some of the companies. The service should be materially improved if the responsibility for repairs and maintenance is centralized upon some competent person to be compensated by the various companies jointly. The practice of permitting the switchboard to be used as a toll

station is an undesirable one, since it interrupts the regular switchboard service. A separate instrument should be maintained at the central office by the interested companies for the use of the public for toll messages.

It is, therefore, ordered, That the respondents, The Strawberry Telephone Company and Lines Nos. 1, 2, 12 and 13, install and maintain a toll station for the use of the public at the Rewey exchange maintained jointly by them.

It is further ordered, That the respondents, The Strawberry Telephone Company and Lines Nos. 1, 2, 3, 5, 7, 9, 11, 12, 13 and 19, maintain in proper conditions the lines, instruments and other equipment used on their telephone systems, and otherwise conform to the requirements of the standards of telephone service fixed in our decision of August 13, 1914,* copy of which is attached hereto and made a part hereof.

Sixty days is considered a reasonable time in which to comply with the provisions of this order.

Dated at Madison, Wisconsin, this twenty-seventh day of August, 1915.

IN THE MATTER OF THE PROPOSED EXTENSION OF THE WHITTLESEY TELEPHONE COMPANY IN THE TOWNS OF CHELSEA AND GREENWOOD, TAYLOR COUNTY, WISCONSIN.

U-459.

Decided August 31, 1915.

Public Convenience and Necessity Held Not to Require Proposed Extension Into Occupied Territory — Extension Into Territory in Which Objector Operated for Toll, But Not Local, Service Permitted.

OPINION AND DECISION.

The Whittlesey Telephone Company gave notice to the Commission on August 5, 1915, of a proposed extension from the southwest corner of Section 1 in the town of Chel-

* See Commission Leaflet No. 34, p. 1127.

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sea eastward between Sections 1 and 12 into the town of Greenwood and continuing eastward between Sections 6 and 7, and 5 and 8, to the southeast corner of Section 5 in the latter town. The Rib Lake Telephone Company, which operates for local service in the town of Greenwood, filed its objection to the construction as proposed. Hearing was held at Chelsea on August 21, 1915.

The objecting company, while it has a toll line in the town of Chelsea, does not operate there for local service, and therefore cannot lawfully urge an objection to the extensions proposed, so far as it lies within the town of Chelsea. As to the portion of the extension contemplated to be made between Sections 1 and 12, town of Chelsea, the Whittlesey Telephone Company may proceed with construction.

The Rib Lake Telephone Company appeared at the hearing by *Mr. C. R. Claussen* and showed by the testimony that it had a line giving local service extending to the southwest corner of Section 4 in the town of Greenwood. It has two subscribers living in the southeast corner of Section 5. Along the highway between Sections 5 and 8, and 6 and 7, it has a pole line carrying a toll lead into the village of Chelsea. The toll lead is equipped with cross arms to carry a local service wire, should the residents along the line demand service. A number of the residents along the highway were signers to a petition requesting service of the Rib Lake Telephone Company, but no testimony was presented showing a public demand for the service of the Whittlesey Telephone Company.

From the facts that are before us, at the present time, therefore, the Commission must find that public convenience and necessity does not require the extension proposed to be made by the latter company in the town of Greenwood.

Dated at Madison, Wisconsin, this thirty-first day of August, 1915.

CANADA.

Board of Railway Commissioners.

APPLICATION, UNDER SECTIONS 244 TO 248, FOR AN ORDER COMPELLING THE BELL TELEPHONE COMPANY OF CANADA TO RESTORE ITS TELEPHONE OFFICE AT THE POLICE VILLAGE OF STONEY POINT, IN SAID TOWNSHIP OF TILBURY NORTH, ONTARIO.

File No. 3574.132.

Decided July 28, 1915.

Commission without Jurisdiction to Order Re-opening of Pay Station.

OPINION AND ORDER.

Application is made under Sections 244 to 248, both inclusive, of the Railway Act, to compel The Bell Telephone Company to restore its telephone office at the police village of Stoney Point, in the township of Tilbury North. The office in question was a pay station.

The complaint has been developed by correspondence and there has, therefore, been delay in receiving the final submissions.

It is stated that until September 1, 1914, the office in question was maintained. It is alleged that there are a large number of residents in the village, as well as in the vicinity thereof, who require that the office should be open for business purposes.

It is submitted that owing to the fact that the Bell company maintained the office at the point in question for a number of years, the burden is on the company of justifying the closing of the office.

The position of the telephone company is as follows:

"Until recently we had a pay station at Stoney Point on a local line running west to Windsor but there was no direct connection over our lines between Stoney Point and Chatham to the east, it being necessary to route all messages for Chatham and the east over our line westward to

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Windsor and thence back over a through trunk between Windsor and Chatham.

"In addition to our pay station at Stoney Point, the locality is also served by the West Tilbury system which connects through Comber with the Bell lines at Tilbury, which is connected by a trunk line to Chatham and also to Merlin and Blenheim, etc.

"I am informed that the West Tilbury system has about 50 subscribers in and immediately around Stoney Point village and these parties instead of going to our toll office at Stoney Point secure connection with our long distance system through the Comber office. This rendered the continuance of our toll office at Stoney Point unnecessary, and it will be observed that the abandonment of our toll office does not in any way cut off Stoney Point from telephone communication. In fact, it gives Stoney Point a better connection to Chatham and the east, which I am informed is the direction in which the bulk of the business from Stoney Point goes, and they are still able to reach western and other points through their connection at Tilbury with our system.

"We, therefore, considered that Stoney Point would be better off under the new arrangement than under the old, and discontinued our toll office there, but at the same time the Tilbury West system undertook to arrange a special trunk line from Stoney Point to Comber for the express purpose of handling business for parties who desired to use a line with no other stations on it and we presume that this new trunk will be built as soon as financial conditions allow of it."

While the application as launched relies upon Sections 244 to 248, inclusive, of the Railway Act, these sections confer no jurisdiction, either by express statement or by implication, to deal with the subject matter of the complaint.

The Railway Act has grown up by accretion and the powers conferred on the Board in regard to telephone companies are not necessarily identical with those conferred in respect of railway companies. Certain sections of the Act are not made applicable to the telephone companies, and as to the remaining sections it is provided that they shall be applicable "in so far as reasonably applicable and not inconsistent with this part or the Special Act."

A pay station or office of the telephone company is analogous in its functions to a railway station. Under Section 258, the Board is given certain powers in regard to railway stations. In pursuance of the powers conferred and the decisions based thereon, the Board has dealt with the con-

ditions under which an agent may be removed from a station, and has also directed that a station should be constructed.

While the Board has this power in respect of railway stations, it is to be noted that by Section 5 of Part 1 of 7-8 Edw. VII, Chapter 61, there is excepted *inter alia* from the sections applicable to telephone companies Section 258. Section 284 dealing with the facilities to be afforded and requiring "at the place of starting * * * and at all stopping-places established for such purpose adequate and suitable accommodation for the receiving and loading of all traffic offered for carriage * * *", is also excepted.

Reference is made to the amount of general business done at Stoney Point. It is stated, "* * * all business has suffered by the closing of the Bell office at Stoney Point, and Stoney Point has been discriminated against in favor of the surrounding villages."

Apparently the word "discriminated" is used as suggesting that business which had gone to Stoney Point now goes to other adjacent villages. There is no evidence adduced to show that there has been any change in the volume of business, nor is there any evidence adduced to show that the alleged difference in the volume of business is due to the closing of the pay station.

Whatever justification there may be for an application which falls within the provisions of the Railway Act, in so far as discrimination is concerned, the present application is concerned simply with an application for the re-opening of a pay station, and in this direction the Board has no power to issue.

July 28, 1915.

PART II.
**SELECTED COMMISSION ORDERS, RULINGS AND
DECISIONS OF INTEREST TO TELEPHONE
AND TELEGRAPH COMPANIES.**

CALIFORNIA.

Railroad Commission.

**FRANK TURNBULL COMPANY v. SWEETWATER WATER
COMPANY.**

Case No. 472 — Decision No. 2644.

Decided July 30, 1915.

**Commission Without Authority to Order One Company to Accept a
Conveyance of the System of Another and to Furnish Service
to the Consumers Thereof.**

On January 30, 1914, the Commission ordered the defendant to accept the offer of the complainant to convey a small water distributing plant to the defendant and further ordered that after such conveyance the defendant should operate this plant and accept and serve as its own, the consumers located on the Turnbull system. Defendant applied for a rehearing.

The defendant had never obligated itself to do more than to deliver water wholesale at a designated point into the pipes of the Turnbull company.

Held: That the Commission has no power to compel the defendant to accept a conveyance of the Turnbull system and thereupon to operate it;

That the only power of the Commission in the premises is to order the defendant to produce better wholesale service at the point of delivery into the pipes of the Turnbull company or to extend its own system into the territory served by the Turnbull company and to serve the Turnbull's consumers directly;

That in view of the evidence submitted it was not advisable to order either improvement in the defendant's wholesale service or the extension of the defendant's system for retail service into the territory of the Turnbull company.

APPEARANCES:

Edgar A. Luce and Harrison G. Sloan, for complainant.
Hunsaker and Britt, A. H. Sweet and F. S. Jennings, for defendant.

Johnson W. Puterbaugh, for National City.

F. B. Andrews, for Chula Vista.

REPORT.

EDGERTON, *Commissioner*:

This is an application for rehearing made by Sweetwater Water Company, defendant.

The Commission heretofore made its order to the effect that defendant, Sweetwater Water Company, accept the offer of Frank Turnbull Company to convey a small water distributing plant located near the city of San Diego, and after such conveyance said defendant was ordered to operate this plant and to accept and serve as its own consumers, the consumers located on the Turnbull system.

A hearing on this application was had, evidence was introduced and arguments made, and the matter is now submitted.

I joined in the order complained of, but upon more mature reflection and consideration of this case, I am convinced we should recede from the position taken therein and the commissioner who wrote the decision on the former application agrees with me in this position.

I believe that the only power of the Commission in the premises is to order Sweetwater Water Company, defendant, to produce better wholesale service at the point of delivery into the pipes of the Turnbull company, or to extend its own system into the territory covered by the Turnbull company, and thereupon to serve the Turnbull consumers directly from its own system. I do not believe this Commission has power to compel defendant to accept a conveyance of the Turnbull system and thereupon to operate it.

The evidence makes it clear that defendant, Sweetwater Water Company, has never obligated itself to do more than

to deliver water wholesale at a designated point into the pipes of the Turnbull company. In fact, the evidence shows that the defendant has, with great care, safeguarded itself against any claim that it had agreed to furnish the territory covered by the Turnbull system with water direct.

The service furnished the Turnbull company appears to be as good as is possible under all the circumstances, unless defendant were compelled to go to a very considerable expense by way of pumping or other device, to increase pressure at the point of delivery. If defendant were compelled to do this it would mean that a better service would be compelled to be given the Turnbull company than is provided for the direct consumers of defendant on other parts of its system. Therefore, I do not believe that the defendant should be ordered to improve this service.

To adopt the other alternative of ordering defendant to extend its system and service into the territory now served by the Turnbull company would open the way to immensely increase the territory to be served by defendant's plant, as there are many thousands of acres located as close or closer to defendant's system than the Turnbull company lands, and if extension be compelled to this property, no just reason could be given for refusing an extension to large amounts of other property.

When it is remembered that this Sweetwater system, according to the testimony in this and other matters before the Commission, is taxed by existing consumers and those who have the right to demand water from it almost to capacity, it does not seem just or safe at this time to order any extension of applicant's system.

The cities of National City and Chula Vista intervened in this proceeding at the hearing, and protested vigorously against any new consumers being taken on by defendant, Sweetwater Water Company, because it was insisted that new consumers would deplete or endanger the supply of present consumers.

The evidence shows that the consumers on the Turnbull system do not get good or adequate service, but I believe

the full responsibility for this situation rests upon the Turnbull company. It laid out this tract of land, made its contract for the delivery of water wholesale with the defendant company, installed its own water distributing system and sold a part of its land to people who made their homes thereon, undoubtedly believing that the water supply would be adequate.

It will be possible for the Turnbull company, by the expenditure of a comparatively small sum of money, to erect a tank to provide a water supply for the people whom it has induced to locate on its lands, and this I believe to be its duty.

I recommend that the order heretofore made be annulled and the complaint herein be dismissed.

Herewith a form of order.

ORDER.

Complaint having been made by Frank Turnbull Company against Sweetwater Water Company, and a hearing having been had on said complaint and an order thereafter made by this Commission, and thereafter application having been made for a rehearing in said matter and evidence having been introduced and argument made on said application for rehearing, and the matter being now submitted, and the Commission being fully apprised in the premises,

It is hereby ordered by the Railroad Commission of the State of California, That the order heretofore made by this Commission on the thirtieth day of January, 1914, be, and the same is hereby, annulled, and the complaint in this proceeding is hereby dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this thirtieth day of July, 1915.

IDAHO.

Public Utilities Commission.

**JAMES A. MURRAY (POCATELLO WATER COMPANY) v. PUBLIC
UTILITIES COMMISSION.**

Commission's Order Reversed — Cause Remanded.

On July.1, 1915, the Supreme Court of Idaho reversed the order of the Commission directing the extension of the appellant's pipe lines (see Commission Leaflet No. 30, p. 1347), and remanded the cause to the Commission (150 Pac. 47).

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MAINE.

Public Utilities Commission.

APPLICATION OF NORTH YARMOUTH WATER COMPANY FOR AUTHORITY TO ISSUE SECURITIES.

U-46.

Decided August 11, 1915.

Conditions on Which Issue of Bonds Would be Authorized and Amount of Bonds to be Issued Determined.

Petitioner sought authority to issue \$10,000 of bonds to provide funds for the construction and equipping of a water plant in the town of North Yarmouth.

Petitioner, which was originally in the same business but serving a territory different from that which it now desires to serve, had conveyed its entire plant and business to the Cumberland Water Company. The consideration for this conveyance was \$3,000 cash, the exact amount which the subscribers of the North Yarmouth company had paid in as capital. This amount was returned to the stockholders and the company ceased to do business, but the stock of the corporation, instead of being retired, was transferred to the three principal stockholders of the Cumberland company. The corporation had parted with all its tangible assets except certain real estate and pipe capitalizable at about \$400. The present owners of the stock desired to revive the North Yarmouth company and to do business again.

Held: That practically the petitioner is a new corporation seeking authority to secure its entire capital, and as such the policy of the Commission adopted in the *Black Stream Electric Company** case should govern;

That all the outstanding stock above \$400 represents nothing that will give it earning value in the hands of possible purchasers;

That if the present stockholders will reduce the amount of capital stock outstanding to not less than \$2,000 par value and pay into the treasury of the corporation cash for all stock remaining outstanding in excess of \$400, at par, the Commission will grant an order authorizing the issue of 5 per cent. mortgage bonds sufficient to secure a combined capital of \$6,000 when said bonds are sold on not less than a 6 per cent. basis.

APPEARANCES:

Howard Davies, for petitioner.

* See Commission Leaflet No. 43, p. 570.

OPINION.

Petition by North Yarmouth Water Company, a corporation organized under Chapter 56, Private and Special Laws of 1909, for permission to issue 20-year 5 per cent. mortgage bonds of the aggregate amount of \$10,000 to provide funds for constructing and equipping a water plant to furnish water for fire and domestic purposes in the town of North Yarmouth, for fire protection in Cumberland and as an additional source of supply to the Yarmouth Water Company at a point of delivery located in the town of North Yarmouth. Petition dated July 12, 1915. Public notice ordered and proved. Hearing held July 22, 1915.

The petitioner was originally engaged in the same business serving a territory different for the several purposes than that now intended to be served. It conveyed its entire plant and business to the Cumberland Water Company, which has continued its operations in the territory then served. The consideration for this conveyance was \$3,000 in cash, the exact amount which the stockholders of the North Yarmouth company had paid in as capital. This amount was returned in cash to these stockholders, and the company ceased to do business. Instead, however, of retiring the stock and dissolving the corporation, the certificates of stock were transferred to three of the principal stockholders in the Cumberland company, ten shares each; so that the Cumberland company became the owner of the property of the North Yarmouth Company, the capital of the latter company converted into cash was withdrawn and distributed among its stockholders, and the naked certificates of stock (naked except as stated below), became the property of certain individuals interested in the Cumberland company, who now desire to revive the North Yarmouth company, and to do the business indicated above.

This Commission has taken the testimony of the petitioner's representatives, from which it appears that it owns, subject to the right to cut ice, about one-fourth of an acre of land, forming a natural reservoir, through which a small stream flows, furnishing a constant supply of water, and

for which it paid \$100. It also owns pipe worth from \$200 to \$300. This constitutes its entire tangible property. It estimates the cost of building a concrete reservoir and dam at \$1,000 and the cost of necessary pipe lines at \$5,000. It will be a gravity system.

The Commission's engineer has made a careful study of the situation on the ground, and reports that the reservoir contemplated would hold about 52,500 cubic feet of water, fed by a small brook which collects the natural run-off from Walnut Hill, which is covered with trees and vegetation and should be free from contamination. He estimates the flow at from one to three gallons per second, depending on the rainfall, and the time required to fill the reservoir at $2\frac{1}{4}$ gallons per second at about forty-eight hours.

The engineer estimates the cost of constructing the plant sufficient for all of the purposes indicated by the petitioner and including the price paid by it for the reservoir site at \$5,906, which does not differ materially from petitioner's estimate. His investigation and report substantially corroborate the petitioner's representations to the Commission as to market for its product and probable revenue therefrom.

It remains, therefore, only for the Commission to determine the amount of bonds which should be authorized and the conditions under which they may be issued. While the amount involved in this matter is small, the case presents a novel question, which is likely to recur and on which the policy of the Commission may as well now be made clear.

The company's balance sheet is as follows:

ASSETS.	
Franchise, Chapter 56, Laws of 1909.....	\$3,000
Real estate free of incumbrances.....	500
Pipe suitable for laying water main, couplings and elbows.....	300
	<hr/>
	\$3,800
LIABILITIES.	
Capital stock, outstanding	\$3,000
Surplus	800
	<hr/>
	\$3,800

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The facts already stated show that there has been withdrawn from the corporation all of the cash that ever was paid in as capital; that the corporation parted with all of its tangible assets except real estate which cost \$100 and pipe, etc., whose value is not claimed to exceed \$300, and that it ceased to do business. Practically, it is a new corporation seeking authority to secure its entire capital, and must be treated as such.

This being true, we believe that the policy adopted by this Commission in the *Matter of the Black Stream Electric Company*,* U-25, P. U. R. 1915 C, 361, should govern. While the original certificates of stock are still outstanding, the value which they represented has been withdrawn dollar by dollar by the former owners. Except for \$400 at most, they now represent no tangible assets. Unless they are vitalized by new money substantially the entire undertaking will be financed from bonds. It is well settled that franchise value cannot be considered as an element in rate making, and this bookkeeping asset would therefore be valueless any time the question of rates might be raised. The Commission could not permit the petitioner to construct a plant on \$6,000 of bonds and exact rates to provide a return on \$9,000 of capitalization. So far as the book value of the real estate is concerned, the corporation paid \$100 for it. It may have been, and probably was, an excellent trade — might have been at \$500. But the accounting rules of this Commission require purchased property to be carried at cost, and, although it was purchased before the Public Utilities Act became operative, considering this in effect as equivalent to capitalizing a new enterprise, we do not think that we ought to deviate from the rule.

We then have in effect a new corporation with assets capitalizable at \$400. All outstanding stock above that represents nothing that can now be considered, or that would give it earning value in the hands of possible future purchasers. This construction is no hardship upon its present owners, because it cost them nothing. Before

* See Commission Leaflet No. 43, p. 570.

additional securities are issued all in excess of \$400 should be turned into the treasury or made good by the advancement to the corporation of an equivalent amount of cash. Bonds should not be authorized without a substantial capital stock margin.

If, therefore, the present stockholders will reduce the amount of capital stock outstanding to not less than \$2,000 par value and pay into the treasury of the corporation cash for all stock remaining outstanding in excess of \$400, at par, the Commission will grant an order authorizing the issue of 5 per cent. mortgage bonds sufficient to secure a combined capital of \$6,000, when said bonds are sold on not less than a 6 per cent. basis.

The case will remain open a reasonable time pending action of the petitioner on the foregoing suggestions.

Given under the hand and seal of the Public Utilities Commission at Augusta, this eleventh day of August, A. D. 1915.

IN THE MATTER OF THE APPLICATION OF THE RUMFORD FALLS
LIGHT AND WATER COMPANY FOR APPROVAL BY THE COM-
MISSION OF A CONTRACT BETWEEN SAID COMPANY AND THE
INHABITANTS OF THE TOWN OF MEXICO, UNDER THE PRO-
VISIONS OF SECTION 3, CHAPTER 347, PUBLIC LAWS OF
MAINE FOR THE YEAR 1915.

U-54.

Decided August 13, 1915.

**Contract for Street Lighting for Fixed Term at Rate Less Than
Domestic Rate Approved—Policy of Disposing of Surplus
Product at Less Than Regular Rates Discussed.**

Applicant sought approval of its proposed contract with the town of Mexico providing for the furnishing by the company of current for street lighting purposes at a rate less than the regular domestic rate named in its schedule, and for a fixed time.

Held: That, although the provisions of the law that rates may be modified by the utility on ten days' notice or by order of the Commission on hearing, work satisfactorily generally, there are cases in which the

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welfare of the utilities, its customers and the general public require greater certainty as to the future rate;

That some consumers who would not use electric energy if charged the regular rate or who would produce their own energy rather than pay the regular rate, afford an opportunity for large producers of power to dispose of, at less than the regular rate, what would otherwise go unused, and if this surplus is sold at any price above the cost of production and transmission, it affords some profit to the utility and to that extent assists the general public in carrying the overhead charges;

That any contract which does not furnish its full pro rata share of the utility's profit will be approved only on the ground that it takes care of the utility's surplus product, and no such contract should be presented where it is reasonable to expect that the same units of product might have been disposed of on terms more consistent with the return of approximately the same percentage of profit lawfully enjoyed generally by the utility;

That an open rate similar to that on which the contract is based should be filed so that other applicants for similar service may know what they are entitled to.

Ordered, That the contract between the applicant and the town of Mexico should be executed, that this should be done in triplicate, and one original copy should be returned to the Commission.

OPINION.

The Rumford Falls Light and Water Company, a corporation duly organized and having its place of business at Rumford, in the county of Oxford and State of Maine, presents to this Commission a contract as yet unexecuted between itself and the inhabitants of the town of Mexico, and asks approval of said contract by this Commission.

Mr. F. O. Eaton, representing the company, explained to the Commission the circumstances which were claimed to make this contract necessary, and satisfied us that the terms and conditions of the contract were reasonable and that the interests of the public and of the company would thereby be properly safeguarded and protected.

Section 32 of Chapter 129 of the Public Laws of 1913 provides in substance that it shall be unlawful for any public utility to furnish its product or service at a reduced rate, except for certain named purposes, and the furnishing of current for lighting streets of a city or town was not among

the purposes for which a public utility could furnish its service at a reduced rate.

The proposed contract is for the furnishing by the company to the town of Mexico current for street lighting purposes, at a rate less than the regular domestic lighting rate named in the schedules of the company, and for a fixed term. The Legislature of 1915, by Section 3 of Chapter 347, Laws of that year, amended Section 32 by adding the following:

"And provided further that it shall be lawful for any public utility to make a contract for a definite term, subject to the approval of the Commission, for its product or service, but such published rates shall not be changed during the term of the contract without the consent of the Commission."

Contracts for comparatively long terms between a public utility and its customers, whereby a particular individual or corporation seems to be securing an advantage over a smaller customer, are not now favored by legislatures or public utilities commissions. In the past, such contracts (sometimes written and sometimes oral "gentlemen's agreements") constituted the methods by which rebates and other special and unwarranted advantages were obtained. It was to make such practices impossible, or at least unlawful, that the legislatures in nearly every state during the last seven years have passed public utility acts and created commissions to assist public service corporations in doing away with the necessity of these special agreements and to so arrange matters between the corporations and the public that all business dealings should be carried on in the open, each having a full, mutual understanding of the acts and the rights of the other, and each having in the Commission a friend to whom he could at all times go with full confidence in finding a patient ear, a ready, though just, sympathy, and a full, calm and judicial hearing and decision.

Under the Maine Utilities Act all secret agreements are unlawful and each public utility is prohibited, under heavy penalty, from charging or collecting, for any service ren-

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dered, any sum whatever which is not in strict conformity with its schedule of rates. This makes it necessary for each such utility to file with this Commission a schedule of rates showing each service, and the exact price therefor, which is offered to the public. In this way the public and the Commission are at all times fully informed.

By the terms of the law these schedules may be modified by the utility on ten days' notice, or by order of the Commission on hearing, either on complaint or on its own motion. While this works satisfactorily generally, there is a class of cases in which the welfare of the utility and of its prospective customers, and, we believe, of the public, require greater certainty as to the future rate for a particular service. Frequently the establishment of an enterprise depends upon the certainty of its being able to secure power at a known cost for an extended period. In other cases, where a change of the character of power used is contemplated, the user must know what the future cost will be.

In still other cases, and the present is an example of this class, a prospective consumer of large units, must determine whether he will generate his own power or purchase from some established utility. He can often produce his power at less cost than the fair price charged by the utility for its output delivered to its usual class of customers. This happens because he can use for generating power, a by-product of his regular business, or, as in the case of municipalities, does not expect any returns on the capital invested. None of these considerations would warrant special rates or especially favorable terms to such prospective users. No person may be given a lower rate to induce him to use the current, or to prevent his generating his own power. This decision is to be read with this always in mind.

But such consumers afford an opportunity for larger producers of power to dispose of what otherwise would go unused. If this surplus energy is sold at any price above the cost of production and transmission, it returns some profit to the utility. To that extent also it assists the general

public in carrying the overhead charges of the utility. If a contract is approved which does not promise its full pro-rata of the utility's fair profit on its business as a whole, it will be on the ground that it takes care of its surplus product, and no such contract should be presented where it is reasonable to expect that the same units of product might have been disposed of on terms more consistent with the return of approximately the same percentage of profit lawfully enjoyed generally by the utility on its output.

It was to meet these different contingencies that the legislature enacted the statute above quoted. And so long as the price is sufficient to return some profit to the utility, and is open as long as the utility has current to supply without injury to the general public dependent upon it, it is obviously to the advantage of all that it be permitted to avail itself of the privilege. That the unit required is so large, or the character of its use confined to so few users that its customers under this rate will be few, should not operate against it, provided it keeps reasonably within the spirit of the law. These contracts should and will be scrutinized with great care, but the public interest does not require, and it is not the policy of the law to effect, anything that shall stand in the way of the widest reasonable and just expansion of the business of the public utilities of the State.

The statute evidently presupposes the filing of an open rate similar to that on which the contract is based, so that other applicants for service of the same character may know what they are entitled to. It may well be said that a public rate for a class of service like that involved in the contract under consideration is of little practical value, because in the very nature of things, there probably would be but one customer. But these schedules perform another service. The dealings of a public utility with all of its customers should be as public as practicable, to the end that they may be fully advised of all matters relating to its rates. It is necessary that the petitioner file with its schedule of rates a class rate containing the rate defined in its peti-

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tion, which shall remain in force according to the terms of the statute.

It is, therefore, ordered, That the contract between the Rumford Falls Light and Water Company and the inhabitants of the town of Mexico, copy of which is hereto annexed, be executed by said parties in triplicate, one original copy to be returned to this Commission, with the schedule on which it is based, and one to be retained by each of the contracting parties, and that when so executed and returned, it be and stand approved under and as in accordance with Section 3, Chapter 347, Public Laws of Maine, for the year A. D. 1915.

Given under the hand and seal of the Public Utilities Commission, at Augusta, this thirteenth day of August, A. D. 1915.

SOUTH DAKOTA.

Board of Railroad Commissioners.

**BUNNELL AND SON COMPANY, *et al.*, v. CHICAGO, MILWAUKEE
AND ST. PAUL RAILWAY COMPANY.**

F-185.

Decided June 26, 1915.

Installation of Telephone in Railroad Station Ordered.

FINDINGS AND CONCLUSIONS.

The complaint in this proceeding was filed on the twenty-third day of February, 1915, for the purpose of requiring the defendant, the Chicago, Milwaukee and St. Paul Railway Company, to install and maintain telephone facilities in its depot at its station of Vivian, South Dakota.

The call and demand was issued on the twenty-third day of February and served upon the defendant. The answer of the defendant was filed on March 20, 1915, and on May 13, 1915, a hearing was called to be held on the complaint at the town of Vivian, on June 3, 1915. Upon request of the defendant, said hearing was postponed to be held at Vivian on June 18, 1915, at the hour of 10 o'clock of said day.

At the time and place of hearing, the complainants appeared in person and the defendant appeared by *Mr. B. F. Van Vliet*, of Mason City, Iowa, its division superintendent.

The record discloses that the farmers and patrons of the station of Vivian are greatly inconvenienced by the failure of the defendant to maintain telephone facilities in its depot, for the reason that they are unable to secure necessary information in connection with ordering of cars, receipt of freight, express, and in sending and receiving telegrams. That on account of the lack of telephone connections and telephone facilities at the depot, they are compelled to

make several trips to town in connection with one shipment of freight, and thereby put to considerable cost and inconvenience. When it is considered that some of the patrons in question, who are also subscribers of the telephone company, are located eight, ten, fifteen and even twenty miles distant from Vivian, their trade town, it will readily be seen that their inability to secure information as to whether or not expected shipments of freight and express had arrived, by other means than by driving to town for it and possibly learning upon arrival at the depot that the goods had not arrived, is certainly an inconvenience and unnecessary hardship. This condition would be obviated by the installation of a telephone.

The record further shows that the public living within the town are also inconvenienced to a considerable degree, and largely for the same reasons as outlined in connection with the rural patrons, and also their inability to secure information as to the arrival and departure of trains is claimed by many of the witnesses testifying in this case to be a serious inconvenience.

It is our opinion, and we so find, that public necessity and convenience demands and requires that the complainants herein be granted the relief sought, and that the Chicago, Milwaukee and St. Paul Railway Company be required to cause to be installed a telephone in its depot at Vivian, South Dakota, on or before the second day of August, 1915.

Let an order be entered accordingly.*

Done in regular session of the Board of Railroad Commissioners, this twenty-sixth day of June, 1915.

* Copy of order omitted.

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ACCESSIONS
RECEIVED ROOM

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UNIV. OF MICH.
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